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SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Horry County  
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2023-001578

---

John Alexander Webb, .....Appellant.  
vs.

The State, .....Respondent.

---

**RECORD ON APPEAL**

---

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )  
STATE, )  
Versus )  
JOHN ALEXANDER WEBB, )  
Defendant. )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT NOS. 2017-GS-26-3144

2017-GS-26-3145, 2017-GS-26-3146

**ORDER GRANTING MOTION  
IN ARREST OF VERDICTS**

CLERK OF COURT  
HORRY COUNTY, SC

2019 OCT 25 AM 11:56

FILED

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."

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:

**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).

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.

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 **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)

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*.

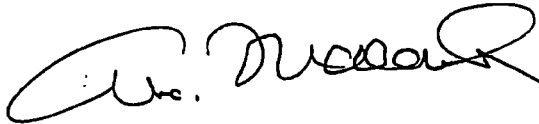
3. "Here, the jury was permitted to 'infer' or 'conclude' that the missing [report or other document required to be kept — though none were particularly defined or designated by the State] were fraudulently [omitted] unless he physically produced evidence to the contrary." *Id.*
4. "[W]hen the case rests 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

FILED  
2019 OCT 25 AM 11:56  
RENEE A. ELVIS  
CLERK OF COURT  
Horry County, SC

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF GENERAL SESSIONS  |
|                         | ) | Warrant: 2017A2610200646 - 00649  |
| COUNTY OF HORRY         | ) | Indictment: 2017GS2603146 - 03145 |
|                         | ) | Case: 17H01830                    |
| STATE OF SOUTH CAROLINA | ) |                                   |
|                         | ) |                                   |
| PLAINTIFF.              | ) | MOTION TO RECONSIDER              |
|                         | ) |                                   |
| VS.                     | ) |                                   |
|                         | ) |                                   |
| JOHN ALEXANDER WEBB     | ) |                                   |
|                         | ) |                                   |
| DEFENDANT.              | ) |                                   |

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**Facts/ Procedural History**

This matter comes before the Court on the State's Motion to Reconsider this Court's Order Granting Motion in Arrest of Verdicts. On April 23, 2019, a jury convicted the defendant, John Alexander Webb, of three counts of violation of the drug distribution law which are listed in the above-captioned indictments. After the jury rendered the guilty verdict, this Court sentenced the defendant to one year suspended to ninety days of imprisonment, which may be served on the weekends beginning May 3, 2019, and the service of one year probation on each charge to run concurrently. On April 26, 2019, the defendant filed a motion for new trial, and this Court heard oral arguments on June 18, 2019, on the motion of the defendant, John Alexander Webb, for New Trial and/or Judgment in Arrest of Verdict, through his attorney, Francis A. Humphries, Jr. The State was represented by Senior Assistant Solicitor Mary-Ellen Walter and Assistant Solicitors George Henry Martin, III and Seth A. Oskin.

At the hearing, the Defendant moved for a New Trial and/or Judgment in Arrest of Verdict requesting the court act as a 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 indictments. On October 18, 2019, this Court ruled with the defendant and signed the order Granting Motion in Arrest of

Judgment. The order was clocked with the Horry County Clerk of Court on October 25, 2019, and electronically filed on November 5, 2019. The State was not properly served with notice of the order and discovered the ruling on November 12, 2019. The State now comes before the Court on its Motion to Reconsider this Court's Order Granting Motion in Arrest of Verdicts.

### Law/Analysis

The Order Granting Motion in Arrest of Verdicts should be reconsidered and denied. First, the court erred by misapplying State v. Dobson, 281 S.C. 36, 314 S.E.2d 310 (1984) to the facts of this case. The South Carolina Supreme Court in Dobson states, "[a]ny evidence, direct or circumstantial, reasonably tending to prove the guilt of the accused, creates a jury issue." Id. (citing State v. Perry, 309 S.E.2d 9 (S.C.1983)). "However, when 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." Id. (citing State v. Stewart, 278 S.C. 296, 295 S.E.2d 627 (1982)). The Supreme Court in State v. Bennett further clarified the proper role of the judge versus that of that of the jury. 415 S.C. 232, 781 S.E.2d 352 (2016). "[A]lthough 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." Id. "This objective test is founded upon reasonableness." Id.

In this case, the State presented witness testimony at trial from which the jury could have inferred guilt. As evidenced by its verdict, the jury did in fact infer guilt.

Second, the relief this Court granted (setting aside and vacating the verdicts and entering verdicts of not guilty) is not within its power once the jury has rendered its verdict. "A 'motion for arrest of judgment' is a post verdict motion made to prevent the entry of a judgment where the charging document is insufficient or the court lacked jurisdiction to try the matter." State v.



Follin, 352 S.C. 235, 573 S.E.2d 812 (2002) (citations omitted). “The Defense may make a motion for a verdict in arrest of judgment, but only if the motion is based on the grounds of insufficiency of the indictment or some other fatal defect appearing on the face of the record (such as lack of jurisdiction), not on the grounds of insufficiency of the evidence. State v. Taylor, 355 S.C. 392, 585 S.E.2d 303 (2003). “[A] circuit judge may issue an order granting a **POST-TRIAL** motion for a **VERDICT IN ARREST OF JUDGMENT AND ENTRY OF JUDGMENT OF ACQUITTAL** to prevent entry of judgment on the grounds of the insufficiency of the indictment or some other fatal defect appearing on the face of the record. The circuit judge may **NOT** issue an order granting a **VERDICT IN ARREST OF JUDGMENT AND ENTRY OF JUDGMENT OF ACQUITTAL** based on the sufficiency of the evidence to sustain the allegation in the indictment.” State v. Taylor, 348 S.C. 152, 588 S.E.2d 517 (2001)(emphasis in original) (*affirmed in result by* State v. Taylor, 355 S.C. 392, 585 S.E.2d 303 (2003)). “It is well-settled that a verdict in arrest of judgment should not be granted based on the insufficiency of the evidence; the proper remedy is a new trial.” State v. Taylor, 355 S.C. 392, 585 S.E.2d 303 (2003) (citing State v. Dasher, 278 S.C. 395, 297 S.E.2d 414 (1982); State v. Syphrett, 27 S.C. 29, 2 S.E. 624 (1887); State v. Hamilton, 17 S.C. 462 (1882)).

Here, the court based its ruling on the sufficiency of the evidence rather than the fatal defect in the indictment, which is improper. The only post trial relief available to this Defendant is the grant of a new trial; therefore, the trial court erred in granting an arrest of judgment.

Lastly, it would be error for the trial court to grant a new trial based on arguments that were waived or conceded at trial. A trial court cannot *ex mero motu*, of his own accord, order a new trial on a ground not raised by a party. Southern Railway Co. v. Coltex Inc., 285 S.C. 213, 214, 329 S.E.2d 736 (1985); see also State v. Dicapua, 383 S.C. 394, 680 S.E.2d 292 (2009)

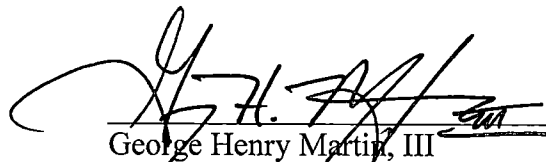
holding that a trial court cannot *ex mero motu*, of his own accord, order a new trial on a ground not raised by a party also applies in a criminal case). “The right to have the law declared is waived by silence in the face of an omission from the charge.” *Id.* 215, 737. A party waives the right to a legal issue when it fails to object to it at the trial level. *Id.* 216, 737. Therefore, an issue not objected to by either party at trial is not properly before the trial court, the Court of Appeals, or even the Supreme Court in a motion for new trial. *Id.* To affirm the grant of a new trial on a ground waived by a party is an error of law. *Id.*

Here, the Defendant failed to make any objection or mention of any burden shifting issue at trial. The issue was raised for the first time after the conclusion of the trial by the trial court judge.

**WHEREFORE**, the State respectfully requests the trial court reconsiders its ruling in the Order dated October 15, 2019 and filed on October 25, 2019 and issue an order reinstating the guilty verdicts, denying the Defendant’s motion for a new trial, and finding that judgment in arrest of verdict is improper, or in the alternative granting a new trial.

Respectfully Submitted,

FILED  
2019 NOV 15 PM 2:37  
RECEIVED  
CLERK OF COURT  
Horry County, SC

  
George Henry Martin, III  
Assistant Solicitor  
Fifteenth Judicial Circuit Solicitor’s Office  
1301 Second Avenue  
Conway, South Carolina 29528  
(843) 915-8644

November 15, 2019  
Conway, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

STATE OF SOUTH CAROLINA)

Versus

JOHN ALEXANDER WEBB,

Defendant.

IN THE COURT OF GENERAL SESSIONS

INDICTMENTS NOS. 2017-GS-26-3144  
2017-GS-26-3145, 2017-GS- 26-3146

ORDER DENYING MOTION

TO

RECONSIDER

REBECCA H. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

2019 DEC 24 AM 8:33

FILED

After careful consideration of the able arguments and filings of Counsel, the Court is unable to discover any material fact or principal of law that either has been overlooked or disregarded, and, further, finds no error of law or fact not appropriately considered by its ORDER GRANTING MOTION IN ARREST OF VERDICTS, dated October 18, 2019, of the Defendant, John Alexander Webb.

Accordingly, the State's Motion to Reconsider this Court's Order Granting Motion in Arrest-of-Verdicts, is DENIED.<sup>1</sup>

AND, IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Presiding Judge

Walhalla, South Carolina  
December 20, 2019

<sup>1</sup> The motion may, in the discretion of the court, be determined on briefs filed by the parties without argument. Rule 29(a), SCRCrimP..

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

ORDER IN A CRIMINAL CASE  
WARRANT(S) 2017A2610200646, 0648, 0649

IN THE COURT OF GENERAL SESSIONS

INDICTMENT(S): 2017GS2603144 -3146

State of South Carolina

JOHN WEBB

DEFENDANT(S)

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 NEW TRIAL**
- ☐ 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 : \_\_\_\_\_

Requiring the defendant to produce records  
mandated by State law is not burden shifting.

Margaret Culbertson  
Circuit Court Judge

2148  
Judge Code

Aug. 10, 2023  
Date

For Clerk of Court Office Use Only

This judgment was entered on this 10 day of **August, 2023** and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of **August, 2023** to attorneys of record or to parties (when appearing pro se) as follows:

MARY-ELLAN WALTER

LACEY THOMPSON

ATTORNEY(S) FOR THE STATE

*Renee N. Elvis*

Clerk of Court

Court Reporter:

FILED  
HORRY COUNTY  
2023 AUG 10 PM 1:20  
RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC



State of South Carolina  
The Circuit Court of the Fifteenth Judicial Circuit

Benjamin H. Culbertson  
Resident Circuit Judge

P. O. Box 479 (zip code 29442)  
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.

*Margaret T. Culbertson*  
Circuit Court Judge

2148  
Judge Code

Sept. 27, 2023  
Date

For Clerk of Court Office Use Only

This judgment was entered on the 21<sup>st</sup> day of September, 2023 and a copy mailed first class or placed in the appropriate attorney's box on this 21<sup>st</sup> day of September, 2023 to attorneys of record or to parties (when appearing pro se) as follows:

MARY-ELLEN WALTER

LACEY THOMPSON/LAURA HILLER

ATTORNEY(S) FOR THE STATE

ATTORNEY(S) FOR THE DEFENDANT(S)

*Renee N. Elvis*

CLERK OF COURT

Court Reporter:



|                         |   |                                    |
|-------------------------|---|------------------------------------|
| 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 PM 2:22  
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 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:



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COUNSEL FOR DEFENDANT

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SC Bar No. 012921

Myrtle Beach, South Carolina

April 25, 2019

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

v.

JOHN WEBB,

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS  
OF THE FIFTEENTH JUDICIAL CIRCUIT

MOTION FOR RE-CONSIDERATION

INDICTMENT NOS.: 2017GS2603144, 45, 46

FILED  
HORRY COUNTY  
2023 AUG 18 AM 10:00  
RENEE H. ELI  
CLERK OF COURT  
HORRY COUNTY, S.C.

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.

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.

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.

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.

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.

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.

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:

...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.

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:

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:

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.

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.

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.

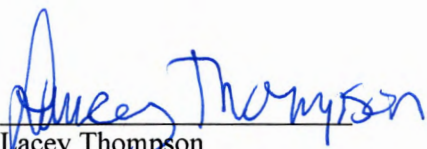
3. The Assistant Solicitor specifically brought up in the post-trial argument the defendant had still not provided the records to her office. While undersigned counsel has been in possession of recreated records since the beginning of their representation, she had not believed production to be relevant 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.

### CONCLUSION

Defendant requests that the Court reconsider their ruling and grant the Defense's Motion for a New Trial.

**COPY**

August 18, 2023

  
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|                          |   |                                  |
|--------------------------|---|----------------------------------|
| 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.               | ) |                                  |
|                          | ) |                                  |

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**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**

|    | <u>I N D E X</u>        |               |              |                                |
|----|-------------------------|---------------|--------------|--------------------------------|
|    | <u>WITNESS</u>          | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> <u>RECROSS</u> |
| 1  |                         |               |              |                                |
| 2  |                         |               |              |                                |
| 3  |                         |               |              |                                |
| 4  | <b>DEREK STRICKLAND</b> |               |              |                                |
| 5  | By Mr. Martin           | 34            |              |                                |
| 6  | <b>SHERIDON SPOON</b>   |               |              |                                |
| 7  | By Mr. Martin           | 112           |              | 121                            |
| 8  | By Mr. Humphries        |               | 118          |                                |
| 9  | <b>VICTOR COLLIER</b>   |               |              |                                |
| 10 | By Mr. Martin           | 123           |              |                                |
| 11 | By Mr. Humphries        |               | 126          |                                |
| 12 | <b>BILLY DAVIS</b>      |               |              |                                |
| 13 | By Mr. Martin           | 127           |              | 132                            |
| 14 | By Mr. Humphries        |               | 131          |                                |
| 15 | <b>CONNIE WILLIAMS</b>  |               |              |                                |
| 16 | By Mr. Oskin            | 138           |              |                                |
| 17 | <b>LEONARD CUMMINGS</b> |               |              |                                |
| 18 | By Mr. Oskin            | 144           |              |                                |
| 19 | By Mr. Humphries        |               | 147          |                                |
| 20 | <b>KATE BIRRINGER</b>   |               |              |                                |
| 21 | By Mr. Oskin            | 150           |              | 156                            |
| 22 | By Mr. Humphries        |               | 154          |                                |
| 23 | <b>KARISSA PROCTOR</b>  |               |              |                                |
| 24 | By Mr. Oskin            | 157           |              |                                |
| 25 | By Mr. Humphries        |               | 160          |                                |

|    |                                     |                                        |                     |                        |                       |
|----|-------------------------------------|----------------------------------------|---------------------|------------------------|-----------------------|
| 1  | <b><u>WITNESS</u></b>               | <b><u>DIRECT</u></b>                   | <b><u>CROSS</u></b> | <b><u>REDIRECT</u></b> | <b><u>RECROSS</u></b> |
| 2  |                                     |                                        |                     |                        |                       |
| 3  | <b>DEREK STRICKLAND</b>             |                                        |                     |                        |                       |
| 4  | By Mr. Martin                       | 162                                    |                     | 182                    |                       |
| 5  | By Mr. Humphries                    |                                        | 177                 |                        |                       |
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1           **THE COURT:** Good afternoon, ladies and gentlemen. My  
2 name is Alex McCaulay. I am the retired active Judge from the  
3 10<sup>th</sup> Judicial Circuit in South Carolina which includes Oconee  
4 County, which is my residence, and Anderson County. I have  
5 been asked this week to serve as the presiding Judge over a  
6 term of general sessions court sometimes called criminal court  
7 here in Horry County. The purposes is to resolve questions of  
8 alleged criminal conduct arising between the State of South  
9 Carolina and the defendant in a fashion which will insure that  
10 justice under the law is accomplished. The trial of the case  
11 begins with the selection of the jury. Both the State and the  
12 defendant are entitled to jurors who approach the case with an  
13 open mind. The trial jury must be free as humanly possible  
14 from any bias, prejudice or sympathy for either side and free  
15 from any preconceived ideas on the law or the facts of the  
16 case. Therefore, certain questions will be asked of you the  
17 jury panel. The questions which will be asked are designed to  
18 ensure that each side has a fair and impartial jury. I'd like  
19 to note further, if any person should talk with you or attempt  
20 to talk with you about any case scheduled for this term of  
21 court, it would be your solemn duty to immediately report them  
22 to the Court. Now, we will begin with the selection of the  
23 trial jury.

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

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

5           Mr. Solicitor, you may call your first case.

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

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

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

17           **MR. HUMPHRIES:** I will.

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

22           **THE COURT:** Thank you very much.

23           **MR. HUMPHRIES:** Thank you, Judge.

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

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

3 **MR. MARTIN:** Yes, sir. I'm George Henry Martin. I'm a  
4 solicitor here in the 15<sup>th</sup> Judicial Circuit.

5 **MR. OSKIN:** I'm Seth Oskin, also an assistant solicitor  
6 in the 15<sup>th</sup> Circuit, that's Horry and Georgetown County. With  
7 us is the case agent Derek Strickland and Investigator Angela  
8 Wallace.

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

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

20 **THE COURT:** If you would, please, yes.

21 **MR. HUMPHRIES:** Thank you.

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



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

5 **THE COURT:** Thank you very much.

6 **MR. HUMPHRIES:** Thank you, Your Honor.

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

14 Inspector Angela Wallace. Thank you, ma'am.

15 Inspector Derek Strickland. Thank you, sir.

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

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

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

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

23 **THE COURT:** And Kate Radzevick Birringer.

24 **MR. OSKIN:** Yes, sir.

25 **THE COURT:** Leonard Cummings and Karissa Proctor. If any

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

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

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

5 **THE COURT:** Or may testify.

6 **MR. HUMPHRIES:** Correct.

7 **THE COURT:** Excuse me. I'm sorry.

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

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

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

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

25 Has any member of the jury panel heard anything about

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

4 Yes, ma'am. Your name, please?

5 **JUROR 11:** Brenda Forrest.

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

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

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

16 **JUROR 11:** Yes.

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

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

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

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

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

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

17       **THE COURT:** From the defense?

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

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

21       **CLERK:** Yes, sir.

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

1 the case has five strikes.

2 **MR. MARTIN:** That is correct, Your Honor.

3 **THE COURT:** Defense has five?

4 **MR. HUMPHRIES:** Yes, sir, Your Honor.

5 **THE COURT:** Do you want an alternate?

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

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

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

10 **MR. OSKIN:** Yes, sir, Your Honor.

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

13 **CLERK:** Yes, sir.

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

21 **CLERK:** Juror number 28, Alfred Baver.

22 What say the State?

23 **MR. OSKIN:** Please present this juror.

24 **CLERK:** Defense?

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

1 this case.

2 **CLERK:** You're excused from this particular case.

3 Juror number 255, Cheryl Patitucci.

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

5 **CLERK:** Juror number 255.

6 **MR. HUMPHRIES:** Thank you.

7 **CLERK:** What say the State?

8 **MR. OSKIN:** Please present this juror.

9 **CLERK:** Defense?

10 **MR. HUMPHRIES:** Please seat the juror.

11 **CLERK:** Please be seated in the jury box.

12 Juror number 111, Matthew Featherston.

13 What say the State?

14 **MR. OSKIN:** Please present this juror.

15 **CLERK:** Defense?

16 **MR. HUMPHRIES:** Please seat the juror.

17 **CLERK:** Please be seated in the jury box.

18 Sixteen, Mark Arnott.

19 What say the State?

20 **MR. OSKIN:** Please excuse this juror.

21 **CLERK:** You're excused from this particular case.

22 Fifty Four, Windy Buffkin.

23 What say the State?

24 **MR. HUMPHRIES:** Please present the juror. I'm sorry,

25 that's what I used to do. I beg your pardon.

1       **MR. OSKIN:** The State will present the juror as well.  
2       **MR. HUMPHRIES:** I will seat the juror.  
3       **CLERK:** Please be seated in the jury box.  
4       **MR. HUMPHRIES:** It happens every time.  
5       **CLERK:** Juror number 316, Jason Taska.  
6       What say the State?  
7       **MR. OSKIN:** Present this juror, please.  
8       **CLERK:** Defense?  
9       **MR. HUMPHRIES:** Seat the juror, please.  
10       **CLERK:** Please be seated in the jury box.  
11       Forty, Theresa Borgeson.  
12       What say the State?  
13       **MR. OSKIN:** Please present this juror.  
14       **CLERK:** Defense?  
15       **MR. HUMPHRIES:** Please seat the juror.  
16       **CLERK:** Please be seated in the jury box.  
17       Three twenty seven, Nicole Tropauer.  
18       What say the State?  
19       **MR. OSKIN:** Please excuse this juror.  
20       **CLERK:** You're excused from this particular case.  
21       Twenty, Nathan Baker.  
22       What say the State?  
23       **MR. OSKIN:** Please present this juror.  
24       **CLERK:** Defense?  
25       **MR. HUMPHRIES:** Please seat the juror.

1       **CLERK:** Please be seated in the jury box.  
2       Fifty, Tammy Brown.  
3       What say the State?  
4       **MR. OSKIN:** Please present this juror.  
5       **CLERK:** Defense?  
6       **MR. HUMPHRIES:** Please seat the juror.  
7       **CLERK:** Please be seated in the jury box.  
8       Juror number 149, Peter Gorry.  
9       What say the State?  
10      **MR. OSKIN:** Please present this juror.  
11      **CLERK:** Defense?  
12      **MR. HUMPHRIES:** Please seat the juror.  
13      **CLERK:** Please be seated in the jury box.  
14      Two ninety four, Erik Short.  
15      What say the State?  
16      **MR. OSKIN:** Please present this juror.  
17      **CLERK:** Defense?  
18      **MR. HUMPHRIES:** Please seat the juror.  
19      **CLERK:** Please be seated in the jury box.  
20      Three thirty seven, Jordan Wardell.  
21      What say the State?  
22      **MR. OSKIN:** Please present this juror.  
23      **CLERK:** Defense?  
24      **MR. HUMPHRIES:** Please seat the juror.  
25      **CLERK:** Please be seated in the jury box.



1 Ninety one, Jonathan Deemer.

2 What say the State?

3 **MR. OSKIN:** Please present this juror.

4 **CLERK:** Defense?

5 **MR. HUMPHRIES:** Please seat the juror.

6 **CLERK:** Please be seated in the jury box.

7 Three hundred eight, Mark Stasen.

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

10 **CLERK:** Sure, 308.

11 What say the State?

12 **MR. OSKIN:** Please present this juror.

13 **CLERK:** Defense?

14 **MR. HUMPHRIES:** Please seat the juror.

15 **CLERK:** Please be seated in the jury box.

16 Do you want me to move one to the alternate?

17 **THE COURT:** Yes, please, two and one.

18 **CLERK:** Juror number 222, Lisa McDowell.

19 What say the State?

20 **MR. OSKIN:** Please present this juror.

21 **CLERK:** Defense?

22 **MR. HUMPHRIES:** Please seat the juror.

23 **CLERK:** Please be seated in the jury box.

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

1           **MR. OSKIN:** No reason, Your Honor.

2           **MR. HUMPHRIES:** Nothing from the defense.

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

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

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

21                           **(BENCH CONFERENCE)**

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

1 provided a system where you don't have to sit in the  
2 courthouse all day, each day but if your service is not needed  
3 as a juror then you can just check in. I understand that  
4 you've been given telephone numbers for a telephone here in  
5 the courthouse. Does everyone have that telephone number? If  
6 not, raise your hand and we'll get one for you. It's on the  
7 pink slip. Does everybody have the pink slip? Anybody that  
8 does not have the pink slip with the telephone number, we'll  
9 get you a copy. Call that number after 6:00, in other words,  
10 a message will be put on about 6:00. But do not call before  
11 and if the line is busy keep trying until you finally get the  
12 message. It will be on all night, it's on a recording device.  
13 Now, of course if you don't get the message from an answering  
14 machine, you'll have to get it from me tomorrow morning at  
15 9:00. So, I think you'd rather get the message -- your  
16 chances are better at being accommodated by getting the  
17 message from the answering machine. Otherwise, as I say  
18 you'll have to report at 9:00 in the morning and get the  
19 message from me. With that I'm going to excuse you for the  
20 balance of the day. I look forward to working with you. We  
21 do have other cases to be tried this week. However, I do want  
22 to thank you for your service this week as jurors. As our  
23 system of justice would not function without citizen  
24 participation, your willingness to be here and to undertake  
25 that duty makes it possible. What we have might not be a

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

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

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

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

15       **THE COURT:** From the defense?

16       **MR. HUMPHRIES:** No, sir. Thank you.

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

18                   **(JURY ENTERS COURTROOM AT 12:57PM)**

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

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

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

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

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

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

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

8           **THE COURT:** 9:00 is fine with me. Well let me ask you,  
9 madam foreperson, it's going to be your call on this, you and  
10 the jury. This does not have to be a unanimous verdict, just  
11 what time would you like to start? I would suggest either  
12 9:00, 9:30 or 10:00. And by the way it's not unanimous.

13           **FOREPERSON:** Your Honor, will 10 be acceptable?

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

1 understand you and you alone are the only ones that are going  
2 to make the determination in this case. And unless the person  
3 is in that jury box with you right now and in that jury room  
4 down the hall when you make the deliberations, they cannot  
5 help you. They have not heard the first witness; they have  
6 not seen the first but of evidence. The only thing they can  
7 do is interfere with a proper resolution of the case. So,  
8 therefore, I am going to instruct you that if anybody should  
9 attempt to talk to you after you tell them that they can't  
10 just say I'll be in to explain it to them if they need an  
11 explanation. You must report them because that would be  
12 improper. Now, with that I'm going to excuse you for the  
13 balance of the day. Now, the bailiff will show you how to get  
14 back to the courtroom and you'll come back tomorrow morning at  
15 10:00 to the jury room that you are using today. Very good.  
16 Thank you very much. I look forward to working with you and  
17 I'll see you at 10:00 in the morning.

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

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

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

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

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



1           **THE COURT:** Do you have any objection ---

2           **MR. MARTIN:** None.

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

9           **DEFENDANT:** Yes, sir, Your Honor.

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

13          **DEFENDANT:** I understand, Your Honor.

14          **THE COURT:** Any question about it?

15          **DEFENDANT:** No, sir.

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

18          **MR. HUMPHRIES:** At your pleasure, Judge.

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

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

24          **THE COURT:** Mr. Humphries?

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

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

2 (RECESS)

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

6 **MR. MARTIN:** Thank you, Your Honor. Mr. Humphries had a  
7 pretty good idea. I'd like to address our first motion prior  
8 to the statement. The State's first motion, Your Honor, is a  
9 Motion in Limine in regards to one the indictments  
10 specifically. That indictment, Your Honor, is 2017-GS-26-  
11 03145 for violation of the drug distribution law. And if Your  
12 Honor would go to the back page of the indictment, the issue  
13 at hand is specifically what we may address during the time  
14 period mentioned in the indictment. So, the dates read from  
15 April 8<sup>th</sup>, 2016 until October 15<sup>th</sup>, 2016 and it states the  
16 defendant knowingly and intentionally obtained or prescribed a  
17 quantity of Phentermine, Schedule IV drug. Judge, the  
18 indictment does not specifically mention other drugs that  
19 during this time period Investigator Strickland determined had  
20 also been prescribed by the defendant, Mr. Webb. Those  
21 specifically are Temazepam, Ambien, and Alprazolam. Judge, we  
22 would still ask the Court for the opportunity when questioning  
23 Mr. Strickland to address additional scripts that were  
24 prescribed. So, even though the defendant is not alleged in  
25 the indictment specifically those scripts, the dates do in

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

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

3 **THE COURT:** Alright.

4 Mr. Humphries.

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

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

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

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

17 **MR. MARTIN:** Yes.

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

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

20 **THE COURT:** Alright. What do you say?

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

1 defense each additional script and the dates were given.

2 Additionally, those scripts ---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1           **THE COURT:** Good faith to whom?

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

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

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

13           **THE COURT:** Well, how many are there?

14           **MR. MARTIN:** There would be three additional ones.

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

18           **MR. MARTIN:** Yes, Your Honor.

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

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

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

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

1 ---

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

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

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

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

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

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

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

25 **MR. MARTIN:** Understandable, Judge.

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

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

6           **THE COURT:** Alright, anything else?

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

9           **THE COURT:** Alright.

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

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

14          **THE COURT:** Certainly.

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

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

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

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

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

25          **THE COURT:** You may proceed.

1           **MR. MARTIN:** Thank you, Your Honor.

2           **DIRECT EXAMINATION OF INVESTIGATOR STRICKLAND BY MR. MARTIN:**

3           **Q:** Investigator Strickland, where do you work?

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

6           **Q:** How long have you been there?

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

8           **Q:** What are your current duties with DHEC?

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

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

15           **A:** I was.

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

19           **A:** I did.

20           **Q:** When would that have occurred?

21           **A:** It occurred February ---

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

23           **A:** Yes, sir.

24           **Q:** You can look at your case report.

25           **A:** Thank you. February 14<sup>th</sup>, 2017 at his attorney, Fran

1 Humphries office.

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

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

5 **Q:** Was the defendant in custody at that time?

6 **A:** He was not.

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

8 **A:** I am.

9 **Q:** And what are those?

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

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

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

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

17 **A:** I did later that day.

18 **Q:** And where was that?

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

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

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

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

1 **A:** I did.

2 **Q:** And did he do anything to the form showing that he  
3 understood his rights?

4 **A:** He did. He signed understanding his rights, as well as I  
5 witnessed it for him.

6 **Q:** Did he give any statement at that time?

7 **A:** No statement.

8 **Q:** So, getting back to the interview at Mr. Humphries office;  
9 did the defendant appear to be under the influence of  
10 anything?

11 **A:** He did not.

12 **Q:** And did he appear to understand everything that was said?

13 **A:** He did.

14 **Q:** And would you have proceeded with the interview if you  
15 felt like any of that was an issue?

16 **A:** I would not.

17 **Q:** Was this interview with Mr. Webb audio or video recorded?

18 **A:** It was audio recorded.

19 **Q:** After recording the interview did you upload the interview  
20 in any way?

21 **A:** I did. I uploaded it to my work laptop.

22 **Q:** And through that process or after that did you alter or  
23 edit the video in any way?

24 **A:** I did not.

25 **Q:** I'm going to show you -- I'm going to walk around the TV

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

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

5 **Q:** Those are, in fact, your initials?

6 **A:** They are. Yes, sir.

7 **Q:** Have you previously listened to this recording?

8 **A:** I have.

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

12 **A:** It is.

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

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

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

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

22 **THE COURT:** Very good.

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

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

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

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

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

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

11 **MR. MARTIN:** May I proceed, Your Honor.

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

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

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

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

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

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

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

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

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



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

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

5 **MR. MARTIN:** That's fine.

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

7 **MR. MARTIN:** Yes, Your Honor.

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

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

15 **THE COURT:** Alright, well I can do that.

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

17 **THE COURT:** Whoa. Cabrera opinion.

18 **MR. OSKIN:** Certainly, within your discretion.

19 **THE COURT:** State versus Cabrera opinion.

20 **MR. MARTIN:** Yes, sir.

21 **THE COURT:** You're familiar with it?

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

24 **THE COURT:** Oh you do?

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

1 anything.

2 **THE COURT:** It was my opinion.

3 **MR. MARTIN:** I figured that was coming.

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

6 **MR. MARTIN:** I graduated in 2014.

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

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

10 **THE COURT:** Alright. Thank you.

11 **(WHEREBY AUDIO IS PLAYED)**

12 **THE COURT:** Wait a minute. What is this?

13 **MR. HUMPHRIES:** This is before the statement.

14 **MR. MARTIN:** Judge, this is ---

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

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

19 **THE COURT:** What are we talking about here?

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

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

22 **MR. HUMPHRIES:** Yes, sir.

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

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

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

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

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

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

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

10                           **(WHEREBY AUDIO IS PLAYED)**

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

13                           **(Conference off record)**

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

16           **THE COURT:** Alright.

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

19           **THE COURT:** Audio, right.

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

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

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

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

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

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

2 **MR. MARTIN:** Right.

3 **(WHEREBY AUDIO IS PLAYED)**

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

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

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

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

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

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

22 **THE COURT:** You were sort of bolstering it.

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

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

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

6 **MR. HUMPHRIES:** Yes, sir.

7 **THE COURT:** Okay.

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

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

17 **MR. MARTIN:** Yes, Your Honor.

18 **THE COURT:** Alright.

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

21 **THE COURT:** Alright.

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

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

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

8 **MR. MARTIN:** Yes, Your Honor.

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

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

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

22 **MR. MARTIN:** Yes, Your Honor.

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

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

3 **MR. MARTIN:** We understand, Your Honor.

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

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

9 **THE COURT:** Alright, so you want to draw the stipulation  
10 ---

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

12 **MR. HUMPHRIES:** Yes, sir.

13 **THE COURT:** Alright, very good. Thank you.

14 **MR. MARTIN:** Continue Your Honor?

15 **THE COURT:** Please.

16 **MR. MARTIN:** Thank you.

17 **(WHEREBY AUDIO IS PLAYED)**

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

21 **MR. MARTIN:** This next portion according to my notes is -  
22 --

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

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

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

1 accurate.

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

4 **THE COURT:** Alright, what is it now?

5 **MR. HUMPHRIES:** We stopped at 27.

6 **MR. MARTIN:** We stopped at 27:30.

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

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

10 **MR. MARTIN:** 27:01 it looks like.

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

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

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

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

21 **MR. HUMPHRIES:** Everybody's got my number.

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

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

25 **MR. MARTIN:** My notes say 29:37.



1           **THE COURT:** I thought you said 27:01.

2           **MR. HUMPHRIES:** That's where we stopped.

3           **THE COURT:** You stopped.

4           **MR. MARTIN:** Right.

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

6           **MR. MARTIN:** 37.

7           **THE COURT:** 37 that you find ---

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

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

13           **MR. HUMPHRIES:** I agree.

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

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

19           **MR. HUMPHRIES:** I am.

20           **THE COURT:** 5:25 to 27:01.

21           **MR. HUMPHRIES:** Correct. And then we start back at  
22 29:37.

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

25           **THE COURT:** Alright.

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

3           **THE COURT:** If you're agreeing ---

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

5           **THE COURT:** Very good. Alright. Now, let's see. Mr.  
6 Martin (sic), maybe you can help me while he's doing that.  
7 I'm, for the first time, looking at the actual statute that  
8 has been an issue here. And am I correct, it's section 44-53-  
9 390(a) ---

10          **MR. MARTIN:** Yes, Your Honor ---

11          **THE COURT:** Just a second.

12          **MR. MARTIN:** I'm sorry.

13          **THE COURT:** (a) (4).

14          **MR. MARTIN:** Yes.

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

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

19          **THE COURT:** Here is says regulations.

20          **MR. HUMPHRIES:** Yes, sir, which takes us back to 44-53-  
21 340; is that correct? Do you agree with that?

22          **MR. MARTIN:** Yes.

23          **THE COURT:** Alright.

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

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

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

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

4 **THE COURT:** 44-53-340.

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

6 **THE COURT:** 340 hasn't gotten ---

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

11 **THE COURT:** Okay. And next.

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

14 **THE COURT:** 360(h).

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

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

19 **MR. HUMPHRIES:** Yes, sir.

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

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

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

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

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

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

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

10          **THE COURT:** Sure.

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

14          **THE COURT:** You say it's case law?

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

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

19          **MR. MARTIN:** Yes, Your Honor.

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

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

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

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

2 **MR. MARTIN:** Yes, sir.

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

10 Alright, now where are we?

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

14 **MR. MARTIN:** Yes.

15 **THE COURT:** 29:37 to 39:20.

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

17 **MR. MARTIN:** Yes.

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

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

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

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

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

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

8 **THE COURT:** Oh okay. Alright.

9 **MR. MARTIN:** Correct.

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

12 **MR. MARTIN:** Yes.

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

15 **MR. MARTIN:** Yes.

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

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

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

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

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

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

5           **MR. OSKIN:** We have one ready and accessible.

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

9           **MR. OSKIN:** Yes, sir.

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

14          **MR. OSKIN:** Certainly understood.

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

19          **MR. OSKIN:** Yes, sir. Absolutely understood.

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

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

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

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

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

6           **THE COURT:** Granted. Give it to the reporter.

7                           **(STATE'S EXHIBIT NUMBER ONE AMENDED**

8                           **TO COURT'S EXHIBIT NUMBER ONE.)**

9           **THE COURT:** Alright, now where are we?

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

12          **MR. HUMPHRIES:** And I have a motion.

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

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

17          **BY MR. MARTIN:**

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

20          **A:** It is.

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

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

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

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



1 take a break.

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

4 **(RECESS)**

5 **THE COURT:** Back on the record.

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

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

17 **THE COURT:** Is it in ---

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

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

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

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

24 **MR. HUMPHRIES:** I have a note about it.

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

1 and still skipped over it.

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

4 **THE COURT:** Sounds good.

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

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

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

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

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

14 **THE COURT:** Who is going to take that?

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

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

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

3 ---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **THE COURT:** I think it probably was.

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

24 **THE COURT:** In other words, three is the only one that's  
25 ---

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

4           **THE COURT:** Exactly.

5           **MR. OSKIN:** Okay.

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

11           **MR. OSKIN:** We appreciate that.

12           **THE COURT:** Well, you're welcome.

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

1 for those things which are talked about in DHEC regs. So,  
2 specifically what I'm saying is this, He's been indicted under  
3 44-53-390(a)(4) that he furnished ---

4 **THE COURT:** Or omit any material information.

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



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

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

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

25 **THE COURT:** Everybody ---

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

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

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

19           **THE COURT:** Alright.

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

22           **DEFENDANT:** Director of Pharmacy.

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

24           **DEFENDANT:** Yes, sir.

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

1 issue with them ---

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

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

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

16 **DEFENDANT:** That's correct.

17 **MR. HUMPHRIES:** And then Billy Davis ---

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

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

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

15 **DEFENDANT:** That's correct.

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

22 **THE COURT:** What documents are they putting in?

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

1 to them by my client.

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

3 **MR. HUMPHRIES:** By the pharmacist, yes exactly. You're  
4 getting a little ahead of me because that is going to be part  
5 of my argument. But, yes, I don't have any problem with the  
6 pharmacist. But, as to Sheridan Spoon testifying about some  
7 standard that otherwise is not a part of a DHEC reg or Doctor  
8 Collier or Doctor Davis or quite frankly Doctor Williams, I  
9 submit that they are not relevant to whether or not my client  
10 violated this statute if they are talking about this is the  
11 orientation program from the residencies. There exist no  
12 records within this clinic indicating that he did these things  
13 because it's already clear he did them outside. That was  
14 clear in his statement. And Inspector Strickland can testify  
15 about those things. So, I feel like I've talked around it.  
16 Do you understand my argument or have I just talked so much --  
17 -

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

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

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

3 **THE COURT:** Will they be able to testify to something in  
4 ----

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

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

10 **MR. MARTIN:** Well, once again it goes towards the part of  
11 ---

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

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

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

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

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

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

23 **THE COURT:** The article is a statute.

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

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

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

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

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

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

13 **THE COURT:** Is it required?

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

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

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

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

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

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

4           **MR. MARTIN:** Well ---

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

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

10           **THE COURT:** Where in the article has he done something --  
11 -

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

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

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

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



1           What do you say about that, Mr. Humphries?

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

3           **THE COURT:** That is in this article.

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

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

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

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

19          **MR. HUMPHRIES:** Right.

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

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

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

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

1 ---

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

4 **MR. MARTIN:** Say that again, Your Honor.

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

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

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

11 **MR. MARTIN:** Well, in addition to the 44-53-340, look at  
12 40-47-113. It details specifically about how a physician ---

13 **THE COURT:** 44-47 ---

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

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

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

17 **THE COURT:** Well, I don't know.

18 **MR. MARTIN:** Well, it is, Your Honor, because if you look  
19 at 44-53-360, it says must be issued for a legitimate medical  
20 purpose. Well, legitimate medical purpose is defined in 40-  
21 47-113 and that section deals specifically with a  
22 physician/patient relationship and then someone who ---

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

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

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

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

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

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

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

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

22 **MR. MARTIN:** And, Judge ---

23 **THE COURT:** Yes, sir.

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

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

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

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

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

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

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

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

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

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

15 **MR. MARTIN:** The language reads ---

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

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

19 **MR. HUMPHRIES:** Which is what statute?

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

21 **MR. HUMPHRIES:** Thank you.

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

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

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

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

16 **THE COURT:** That's in North Carolina.

17 **MR. HUMPHRIES:** I'm sorry.

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

20 **MR. HUMPHRIES:** I understand. Yes, sir.

21 **THE COURT:** Do you have anything to say?

22 **MR. HUMPHRIES:** Yes, sir. I do.

23 **THE COURT:** Okay, then. Stand up.

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

1 references the article. It references DHEC regs, not a  
2 program that he may have been -- that he participated in.  
3 That's my only issue, Judge. If these witnesses get up and  
4 say pursuant to this statute, we require our registrants -- or  
5 our residents to do these things. Pursuant to DHEC regulation  
6 601 whatever, we require, I've got no problem with that. My  
7 issue is if there is testimony outside concerning the  
8 standards that are not specifically based on a statute within  
9 that article or a DHEC reg then that evidence, number one is  
10 not relevant because this statute doesn't hold my client  
11 accountable for that. And if it's not relevant, it is not  
12 admissible. And I'll sit down.

13 **THE COURT:** Yes, sir.

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

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

7 **THE COURT:** Yes, sir.

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

10 **THE COURT:** Pardon?

11 **MR. HUMPHRIES:** They should have charged him with that  
12 about his prescribing privileges as a result of his limited  
13 license. They should have charged him with that, they didn't.  
14 They charged him under this statute and so essentially, they  
15 are offering testimony about a crime or an alleged crime for  
16 which he is not indicted, which then goes back to 404 and  
17 404(b).

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

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

25 **MR. HUMPHRIES:** Yes, sir. At 10.



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

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

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

10          **MR. MARTIN:** 44-53-1640?

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

19          **MR. HUMPHRIES:** Yes, sir.

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

1 | the article at this time or in 2016.

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

7           **MR. HUMPHRIES:** Yes, sir. 390.

8                   **THE COURT:**   390 (a) (4) .

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

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

12                   **MR. HUMPHRIES:** Yes, sir.

13                   **THE COURT:**    Alright.

14                   **MR. HUMPHRIES:** Thank you, Judge.

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

16 (RECESS)

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

23                   **MR. MARTIN:** No, Your Honor.

24                   **MR. HUMPHRIES:** No, sir.

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

1 audio and as I understand ---

2 **MR. HUMPHRIES:** The stipulation, Judge?

3 **THE COURT:** Right.

4 **MR. HUMPHRIES:** We brought you back the original.

5 **THE COURT:** Well, I'm just saying -- here we go, I've got  
6 it. Ms. Clerk, we need to have this marked as Court's Exhibit  
7 1.

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

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

10 **MR. MARTIN:** Yes, Your Honor.

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

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

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

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

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

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

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

14 **THE COURT:** Well, let's do that.

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

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

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

22 **THE COURT:** No, just the ---

23 **MR. HUMPHRIES:** Minute marks.

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

25 **THE COURT:** Alright.

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

2       **THE COURT:** Alright, very well.

3       **MR. HUMPHRIES:** And that is by agreement.

4       **THE COURT:** Agreement. I understand.

5       Alright, anything else?

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

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

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

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

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

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

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

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

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

8 **MR. MARTIN:** Your Honor ---

9 **THE COURT:** It's not an issue.

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

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

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

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

24 **MR. HUMPHRIES:** Yes, sir. No question.

25 **THE COURT:** My days of trying cases are over.

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

2           **THE COURT:** Okay. Alright.

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

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

11          **MR. MARTIN:** Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

15 **THE COURT:** I've ruled.

16 **MR. MARTIN:** Thank you, Judge.

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

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



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

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

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

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

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

12 **THE COURT:** Okay.

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

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

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

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

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

21 **MR. MARTIN:** Yes, Your Honor.

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

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

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

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

14 **THE COURT:** Mr. Humphries.

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

1 There's no bounds on the DHEC regulations. It could be 601,  
2 it could be 101, it doesn't matter. It references DHEC regs.  
3 But as to a statute related to record keeping it references  
4 this article, which is article 3. That is the plain language  
5 of the statute. So, when we start talking about in particular  
6 40-47-113, which was referenced yesterday, it's not contained  
7 in article 3, no question about that. It's not a rule issued  
8 by DHEC; it was issued by the legislature. And it's not a  
9 criminal statute at all. It talks essentially about  
10 professionalism, and ethics within the industry. But it is  
11 not a criminal statute. So, my position is as it was  
12 yesterday, I have no problem with any professional taking the  
13 stand and testifying this is what you have to do because this  
14 statute within article 3 says you have to do it as it relates  
15 to record keeping; or a DHEC reg says you have to do it. But  
16 anything beyond that is not a standard that my client is held  
17 to under this statute. Now, is he held to certain standards  
18 in regards to his licensing? Absolutely. Is there a board  
19 action against him today as a result of perhaps falling short  
20 as it relates to those standards? Absolutely. But that's not  
21 for this courtroom, which is why I move in limine to exclude  
22 any testimony regarding his board action and the grounds of  
23 his board action. Another tribunal will decide those issues.  
24 But in this case, in this courtroom, we have one statute,  
25 which is 390, which has parameters which the legislature in

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

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

3 **MR. MARTIN:** Your Honor, if I may.

4 **THE COURT:** Please.

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

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

20 **MR. MARTIN:** That is correct.

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

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

5 **MR. MARTIN:** Well, Your Honor, he is required to maintain  
6 ---

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

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

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

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

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



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

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

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

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

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

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

21          **MR. MARTIN:** May I ---

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

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

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

2 **THE COURT:** I think the electronic records came in in  
3 2017.

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

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

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

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

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

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

21 **MR. MARTIN:** I agree completely.

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

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

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

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

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

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

10 **MR. MARTIN:** Agree totally, I agree totally.

11 **THE COURT:** Alright. Okay. Thank you.

12 **MR. MARTIN:** Yes, sir.

13 **THE COURT:** Alright now, any questions.

14 **MR. MARTIN:** My understanding ---

15 **THE COURT:** Have you done your charges?

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

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

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

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

1 we're discussing things that might not be relevant.

2 **MR. MARTIN:** Yes, sir.

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

4 **MR. HUMPHRIES:** I gave you mine, Judge.

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

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

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

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

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

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

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

1 them all.

2 **(RECESS)**

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

5 **MR. MARTIN:** No, Your Honor.

6 **THE COURT:** From defense?

7 **MR. HUMPHRIES:** No, sir.

8 **THE COURT:** The jury has not been sworn?

9 **CLERK:** No, Your Honor.

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

11 **(JURY ENTERS COURTROOM AT 10:28AM)**

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

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

19 **JURY PANEL:** I do.

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

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

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

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

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



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

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

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

13 I recognize the solicitor. You may proceed.

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

15 **THE COURT:** Yes, sir.

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

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

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

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

21 **THE COURT:** Mr. Humphries.

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

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

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



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

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

17 **MR. MARTIN:** Your Honor, the State calls Sheridan Spoon.

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

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

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

25 **MR. MARTIN:** May it please the Court?

1                   **THE COURT:** Certainly.

2                   **DIRECT EXAMINATION OF MR. SPOON BY MR. MARTIN:**

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

4                   **A:** Good morning.

5                   **Q:** Where do you work?

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

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

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

14                  **Q:** Is the department commonly referred to as LLR?

15                  **A:** That's correct.

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

18                  **A:** Yes, it is.

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

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

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

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

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

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

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

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

21 **A:** Yes, we do.

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

24 **A:** They are.

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

1 what types of licenses can a medical practitioner obtain?

2 **A:** Under the medical board there's actually about five or six  
3 different licenses and license categories. The board, for  
4 instance, licenses physician assistants, there is a license  
5 for acupuncture, there is a license for respiratory care  
6 practitioners, those are different categories of licenses that  
7 fall under the board. And, of course, you have within the  
8 medical physician license itself either an M.D. or a D.O. you  
9 have several different categories of licenses that have been  
10 created by law.

11 **Q:** Could you explain the difference between a full license  
12 and a limited license?

13 **A:** Yes, sir. There's several difference categories, some  
14 people because of the numbers may not be aware of these.  
15 There's, for instance, there's something known as an academic  
16 license, which is a professor -- an assistant professor or  
17 higher in a medical school. You can use that to teach medical  
18 school. There's a volunteer license, which allows a  
19 practitioner who may be retired and may have once been the  
20 holder of a permanent license to transition because you can  
21 only hold one license at the time. But to transition to a  
22 volunteer license it allows that person to continue working on  
23 a volunteer basis without compensation. And then the two  
24 major categories of medical licenses, although they're very  
25 different, the one that based on the number approximately

1 20,000 permanent -- what we refer to as the permanent or the  
2 regular or the full medical license, that the full medical  
3 license. And then the second category unto itself is the  
4 limited license. That's a license category. That is a  
5 license that is basically a training license to allow the  
6 person who is the holder of that license to complete and  
7 undergo a residency and that residency is, of course, required  
8 in order for that person to move on and obtain a permanent  
9 license at some point if they so choose.

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

12 **A:** He applied for a limited license.

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

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

22 **Q:** Did the defendant initially apply on May 12<sup>th</sup>, 2015?

23 **A:** That's correct.

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

1 **A:** I believe so.

2 **Q:** Would that have been April 27<sup>th</sup>, 2016?

3 **A:** That's correct.

4 **Q:** What paperwork or documentation is necessary for the  
5 license application?

6 **A:** What we try to do with that is we, of course, this would  
7 come out of the licensing requirements themselves that are in  
8 statute and we conform those requirements to the information  
9 that the applicant would see on the application. I'd say the  
10 major components for the limited license would be, of course,  
11 their basic demographic information, the fee, and a copy of  
12 the contract, which the person has entered into a contract  
13 with the residency program. So, we would have a copy of that  
14 contract, which without that the application is not complete;  
15 several letters of reference.

16 **Q:** And you referenced a contract, under that contract is a  
17 medical professional required by the Board of Examiners to  
18 keep records?

19 **A:** Yes, and that would be true for any of the licenses.

20 **Q:** Full or limited?

21 **A:** Record keeping is paramount.

22 **Q:** Are you familiar with the term moonlighting?

23 **A:** I am.

24 **Q:** What is that?

25 **A:** Moonlighting would be -- and this is sometimes a question

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

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

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

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

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

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

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

7 **THE COURT:** Certainly.

8 **BY MR. MARTIN:**

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

11 **A:** Thank you.

12 **CROSS EXAMINATION OF MR. SPOON BY MR. HUMPHRIES:**

13 **Q:** Good morning.

14 **A:** Good morning.

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

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



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

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

5 A: It's a one-year.

6 Q: Okay. Alright.

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

8 Q: Sure.

9 A: The permanent medical license is two-year.

10 Q: Two-years.

11 A: Yes, sir.

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

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

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

18 A: Yes, sir.

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

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

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

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

5 **A:** I think you asked me about practice cites.

6 **Q:** Well, moonlighting.

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

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

11 **A:** Yes, sir.

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

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

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

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

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

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

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

4 **Q:** Sure. Thank you.

5 **THE COURT:** Reexamination.

6 **MR. MARTIN:** Thank you, Your Honor.

7 **REDIRECT EXAMINATION OF MR. SPOON BY MR. MARTIN:**

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

10 **A:** Yes, sir.

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

13 **THE COURT:** Certainly.

14 **BY MR. MARTIN:**

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

17 **A:** Yes.

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

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

22 **Q:** For the residency program.

23 **A:** Uh-huh. (Affirmative response).

24 **Q:** What does part O specifically address

25 **A:** The heading under part O is moonlighting.

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

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

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

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

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

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

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

22 **A:** Thank you.

23 **THE COURT:** You may step down.

24 **MR. SPOON:** Thank you.

25 **THE COURT:** May the witness be excused?

1           **MR. HUMPHRIES:** No objection from the defense.

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

4           **THE COURT:** Very well. I'm just asking.  
5 You may call your next witness.

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

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

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

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

12 **DIRECT EXAMINATION OF DR. COLLIER BY MR. MARTIN:**

13 **Q:** Good morning, Dr. Collier.

14 **A:** Good morning.

15 **Q:** Where do you currently work?

16 **A:** I currently work at Grand Strand Medical Center.

17 **Q:** What's your position there?

18 **A:** I am the Internal Medicine Program Director.

19 **Q:** What are your duties as the program director?

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

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

24 **A:** Yes, sir.

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

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

3 **A:** Yes.

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

6 **A:** Yes.

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

10 **A:** Yes, sir.

11 **Q:** Can you describe what that agreement is?

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

15 **Q:** What parties would sign that agreement?

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

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

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

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

24 **A:** Correct.

25 **Q:** Are you familiar with the term moonlighting?

1 **A:** Yes, sir.

2 **Q:** Is that prohibited in your program?

3 **A:** Moonlighting is prohibited for all first-year residents.  
4 It's allowed for second- or third-year residents who have a  
5 full medical license but not with a limited medical license.

6 **Q:** So, you cannot moonlight with a limited medical license?

7 **A:** Correct.

8 **MR. MARTIN:** Court's indulgence for a moment, Your Honor.

9 **THE COURT:** Certainly.

10 **BY MR. MARTIN:**

11 **Q:** In the residency program itself and in the contract, is  
12 there an agreement that a resident has with the program to not  
13 prescribe to family members?

14 **A:** I believe there is a policy that may or may not be in the  
15 contract that refers to not prescribing to family members.

16 **Q:** But that is part of the residency program at Grand Strand?

17 **A:** Uh-huh. (Affirmative response). Yes, sir.

18 **Q:** And specifically, could you give an example to the jury,  
19 going back to moonlighting. What would be an example of  
20 moonlighting?

21 **A:** So, moonlighting would be basically practicing medicine  
22 outside of the residency program. For example, if you were to  
23 moonlight at a rehab center or another hospital, again only  
24 with a full medical license.

25 **Q:** And did his residency program entail, or involve, where he

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

3 **A:** Correct.

4 **Q:** So, outside of that would be moonlighting?

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

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

10 **CROSS EXAMINATION OF MR. COLLIER BY MR. HUMPHRIES:**

11 **Q:** Good morning, Doctor Collier.

12 **A:** Good morning, sir.

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

16 **A:** Correct.

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

18 **A:** Yes, sir.

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

21 **A:** No, sir.

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

23 **A:** Yes, sir.

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



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

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

4 **A:** Correct.

5 **Q:** Thanks, Doctor.

6 **THE COURT:** Reexamination.

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

8 **THE COURT:** Certainly.

9 **MR. MARTIN:** No further questions.

10 **DOCTOR COLLIER:** Thank you.

11 **THE COURT:** You may step down.

12 May this witness be excused?

13 **MR. MARTIN:** Yes, Your Honor.

14 **MR. HUMPHRIES:** Please.

15 **THE COURT:** Thank you, Doctor.

16 **DOCTOR COLLIER:** Thank you.

17 **THE COURT:** You may call your next witness.

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

19 **BILLY DAVIS, HAVING BEEN FIRST**

20 **DULY SWORN, TESTIFIED AS FOLLOWS:**

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

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

24 **DIRECT EXAMINATION OF MR. DAVIS BY MR. MARTIN:**

25 **Q:** Mr. Davis, where do you work?

1 **A:** Aventura Primary Care and Preventative Medicine in  
2 Aventura, Florida.

3 **Q:** Is that a part of the Hospital Corporation of America?

4 **A:** It is.

5 **Q:** And is that commonly referred to as HCA?

6 **A:** It is.

7 **Q:** And what does HCA do?

8 **A:** HCA is a health care company and we basically pilot  
9 operations in hospitals, outpatient care centers, urgent care  
10 centers, and graduate medical education programs nationwide  
11 and one operation overseas.

12 **Q:** Is Grand Strand Regional Medical Center, is it affiliated  
13 with HCA?

14 **A:** It is.

15 **Q:** Did you use to work at Grand Strand through HCA?

16 **A:** I did.

17 **Q:** What dates, if you recall, did you work there?

18 **A:** January 2016 through October 2018.

19 **Q:** Was there a particular practice within Grand Strand that  
20 you were affiliated with?

21 **A:** Grand Strand Primary Care and Grand Strand Senior Care,  
22 the first six months of my career with them I worked with  
23 Senior Care and then I transitioned to the graduate medical  
24 education resident clinic, which is Grand Strand Primary Care.

25 **Q:** When you worked at Grand Strand Primary Care what was your

1 position there?

2 **A:** I was the practice manager and ethics and compliance  
3 officer.

4 **Q:** As a practice manager what are your duties?

5 **A:** So, basically, I handle all of the practice operations. I  
6 supervise the staff. I provide them training. I give  
7 electronic support to the residents that rotate in and out of  
8 the clinic so they have the tools they need to do their work  
9 while they're in the clinic and make sure they have, you know,  
10 any supplies, medications, things like that on hand.

11 **Q:** Were you responsible for the maintenance of electronic  
12 medical records?

13 **A:** Yes, I was the electronic health records custodian.

14 **Q:** And essentially are electronic medical records a patient's  
15 chart?

16 **A:** Yes. So, from the days of old we have a paper chart and  
17 with the affordable health care act, they moved us over to  
18 electronic medical recording. So, basically, that tells a  
19 story just like an old paper chart did, just in electronic  
20 form.

21 **Q:** So, what is required to be included in this medical record  
22 or chart?

23 **A:** So, the electronic health record basically tells a story.  
24 It tells a story about the individual patient. It talks about  
25 your social history, your family history, your medical

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

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

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

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

14 **A:** We do.

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

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

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

20 **A:** I was.

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

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

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

1     **A:**   No.

2     **Q:**   None at all?

3     **A:**   None at all.

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

6     **CROSS EXAMINATION OF MR. DAVIS BY MR. HUMPHRIES:**

7     **Q:**   Good morning.

8     **A:**   Good morning.

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

10    **A:**   Okay.

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

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

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

19    **A:**   Yeah.  Yes.

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

22    **A:**   Yes.

23    **Q:**   Thanks.

24    **A:**   You're welcome.

25             **MR. MARTIN:**  Briefly on redirect, Your Honor.

1                   **THE COURT:**   Certainly.

2 REDIRECT EXAMINATION OF MR. DAVIS BY MR. MARTIN:

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

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

7                   **THE COURT:**   Afraid so.

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

10                   **THE COURT:** Very good. Thank you.

|    |                    |
|----|--------------------|
| 11 | You may step down. |
|----|--------------------|

12           You may call your next witness.

13       **MR. MARTIN:** Judge, may counsel approach briefly?

14                   **THE COURT:** Certainly.

15 (BENCH CONFERENCE)

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

22 | Have you got it?

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

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

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

8 **MR. MARTIN:** By this document the parties, through  
9 assistant solicitors George Henry Martin and Seth Oskin for  
10 the State, and Francis A. Humphries, Junior for the defendant  
11 do stipulate to the following. The statement of John  
12 Alexander Webb provided on February 14<sup>th</sup>, 2017 to Inspector  
13 Derek Strickland and in the direct presence of his counsel  
14 Francis A. Humphries, Junior was given freely and voluntarily  
15 without threat or coercion or hope of reward. Further, the  
16 statement of John Alexander Webb to Inspector Derek Strickland  
17 was fully in compliance with the defendant's rights pursuant  
18 to Miranda. The statement therefore should be considered  
19 voluntary beyond a reasonable doubt.

20 **THE COURT:** Very good. Thank you. Now, let's see.  
21 They're just listening to the audio, right?

22 **MR. MARTIN:** Yes, Your Honor.

23 **THE COURT:** It has been redacted somewhat and this is the  
24 redacted version that was agreed to by both parties and so  
25 it's not continuous audio. It has been -- it has been

1 redacted at some point by agreement.

2 **MR. MARTIN:** And, Judge, may we approach again?

3 **THE COURT:** Certainly.

4 **(WHEREBY AUDIO RECORDING IS PLAYED FOR JURY.)**

5 **(STATE'S EXHIBIT NUMBER ONE IS**

6 **ADMITTED INTO EVIDENCE.)**

7 **MR. MARTIN:** At this time, that's the conclusion of the  
8 interview.

9 **THE COURT:** And, madam forelady, ladies and gentlemen,  
10 this was stipulated to as being accurate and given freely and  
11 voluntarily.

12 Alright, with that we are right at 12 noon. How much  
13 time do you need for lunch?

14 Alright, we'll do it the same way we did it yesterday  
15 afternoon, consensus? An hour at least.

16 **FORELADY:** An hour.

17 **THE COURT:** One hour. Alright, very well. Again, ladies  
18 and gentlemen of the jury, the instruction is going to be the  
19 same as yesterday and throughout the trial of this case, that  
20 you are not to undertake the discussion of the case among  
21 yourselves in any way or permit anyone to talk to you about  
22 it. If they should then you are to report them, and I will  
23 take the appropriate action. As I said yesterday, you're the  
24 ones that must make the decision in this case and it must be  
25 made on things that are introduced in this courtroom, either



1 evidence or testimony. And no one else can help you, they can  
2 only interfere with a proper resolution of the case. So, with  
3 that I'll excuse you until 1:00. I might note that we can't  
4 start until you get back anyway. I hope we will all be able  
5 to be on the same schedule.

6       Alright, everyone else remain seated while the retires  
7 from the courtroom.

8                               **(JURY RETIRES TO JURY ROOM AT 11:59AM)**

9       **THE COURT:** What's the report on your witnesses in route?

10       **MR. MARTIN:** We've been informed that they'll be here at  
11 1:00.

12       **THE COURT:** 1:00, okay that's the only thing I was really  
13 checking on.

14       Alright, we stand in recess until 1:00.

15       **MR. MARTIN:** Thank you.

16       **MR. HUMPHRIES:** Thank you.

17                               **(RECESS)**

18       **MR. OSKIN:** Madam Court Reporter, State's on record with  
19 regards to stipulations of evidence, specifically State's  
20 Exhibit Number One, State's Exhibit Number Two, State's  
21 Exhibit Number Three, those are prescriptions. They will be  
22 testified to later but defense counsel, Mr. Humphries has  
23 stipulated to allowing them into evidence without objection.

24       **MR. HUMPHRIES:** That's correct.

25       **THE COURT:** Let the record so reflect.

1           **COURT REPORTER:** It should be exhibit two, three and  
2 four.

3           **MR. OSKIN:** I'll fix this real quick on the record, Your  
4 Honor.

5           **THE COURT:** Okay, that'll be good.

6           **MR. OSKIN:** Madam Court Reporter, just to make a  
7 correction for the record, as properly recognized, we are  
8 introducing these prescriptions into evidence with stipulation  
9 by the defense. The correct number will be State's Exhibit  
10 Number Two, State's Exhibit Number Three and State's Exhibit  
11 Number Four. Those are prescriptions that will be later  
12 testified to by the pharmacist that filled them.

13           **THE COURT:** Thank you, gentlemen.

14           **MR. OSKIN:** Thank you, sir.

15           With that, Your Honor, at your leisure the State's ready  
16 to proceed.

17           **THE COURT:** That's good. I appreciate that.  
18 We have a jury I trust.

19           **CLERK:** Yes, sir.

20           **THE COURT:** Anything from the State before we bring the  
21 jury back?

22           **MR. MARTIN:** Judge, we addressed everything.

23           **THE COURT:** Alright, do you need anything to put on the  
24 record? Are you satisfied that you're State's one, two and  
25 three have been admitted?

1           **MR. MARTIN:** Judge, the only thing that the State will  
2 put on the record, and we were going to request to do that in  
3 the jury's presence, was Court Exhibit Three, which was our  
4 second stipulation of the trial. That the recording of the  
5 interview previously published to the jury was entered into  
6 evidence as State's Exhibit One by stipulation of the parties.

7           **THE COURT:** Okay, you don't need that for the jury then?

8           **MR. MARTIN:** I will need to read it before the jury.

9           **THE COURT:** Well, the we should have waited until they  
10 got here.

11           **MR. MARTIN:** Okay.

12           **THE COURT:** Please ask them to join us.

13                           **(JURY ENTERS COURTROOM AT 1:18PM)**

14           **THE COURT:** Alright, let the record reflect the jury and  
15 alternate are in the jury box. Madam forelady, ladies and  
16 gentlemen of the jury, I apologize at the wait but I was  
17 involved in something I had to finish first and so I  
18 appreciate your patients. We will continue with the State's  
19 case.

20           **MR. MARTIN:** And, Your Honor, as previously discussed  
21 with Your Honor outside of the jury's presence, the State's  
22 going to put on the record the stipulation regarding State's  
23 Exhibit One which is the recording that the jury did just  
24 listen to. The recording of the interview previously  
25 published to the jury was entered into evidence as State's

1 Exhibit One by stipulation of both parties, the defense and  
2 prosecution.

3 **MR. HUMPHRIES:** That's correct.

4 **THE COURT:** Alright, very good. And that will be Is it  
5 Court's Exhibit?

6 **COURT REPORTER:** Court's three.

7 **THE COURT:** Court's Exhibit Three. Very good. Admitted  
8 into evidence.

9 **(COURT'S EXHIBIT NUMBER THREE IS**  
10 **ADMITTED INTO EVIDENCE.)**

11 **THE COURT:** Alright, you may now proceed with the case.

12 **MR. OSKIN:** At this time, Your Honor, the State would now  
13 call Ms. Connie Williams.

14 **CONNIE WILLIAMS, HAVING BEEN FIRST**  
15 **DULY SWORN, TESTIFIED AS FOLLOWS:**

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

17 **MS. WILLIAMS:** Connie Williams. W-I-L-L-I-A-M-S.

18 **DIRECT EXAMINATION OF MS. WILLIAMS BY MR. OSKIN:**

19 **Q:** Good afternoon, Director Williams. How are you, ma'am?

20 **A:** Doing fine. Thank you. How are you?

21 **Q:** I'm well. I appreciate you joining us. Director  
22 Williams, where do you work?

23 **A:** Grand Strand Hospital.

24 **Q:** Okay, where is that located, ma'am?

25 **A:** Myrtle Beach.

1 Q: Do you know what county that's in?

2 A: Horry.

3 Q: Okay. What's your position there?

4 A: I'm the Director pf Pharmacy.

5 Q: Okay. What are some of your duties and responsibilities  
6 being the Director of Pharmacy?

7 A: I'm basically responsible for all of the medication use  
8 within the facility, developing policies, procedures. Making  
9 sure that I have competent staff, overseeing the nurses with  
10 their medication delivery and that type of thing.

11 Q: Okay. Do you have any responsibilities regarding  
12 outpatient prescriptions?

13 A: We do not have an outpatient pharmacy, so no we do not  
14 dispense outpatient prescriptions.

15 Q: Please tell this jury about the procedure for  
16 prescriptions for inpatients. By inpatients, I guess I'm  
17 meaning, correct me if I'm wrong, patients being treated in  
18 the hospital whether it be clinically or seeing a physician.

19 A: Okay, sure. Well, first of all they come to the hospital  
20 and they're admitted as an inpatient and then they're seen by  
21 the attending physician and the doctor enters orders into the  
22 computer and then those orders do come to the pharmacy for  
23 verification. We're kind of like a second check, so we're  
24 checking for allegories, drug interactions, appropriate  
25 dosing, duplications, that type of thing. Once the pharmacist

1 has signed off on it then we put it into what we call the  
2 Pyxis machine which is kind of like a candy machine for drugs  
3 for the nurses to dispense the medication. And the nurses  
4 dispense the medication patient specific. Is that clear?

5 **Q:** How about this? If somebody was not a registered patient  
6 at Grand Strand could they order a prescription through your  
7 pharmacy?

8 **A:** No, they cannot.

9 **Q:** Okay. Alright. So, I think you testified that you would  
10 check for drug interactions in the pharmacy?

11 **A:** Yes.

12 **Q:** That's part of your daily duties as a pharmacist?

13 **A:** Absolutely.

14 **Q:** As well as being the director of the program itself.

15 **A:** Sure.

16 **Q:** Is it possible -- so you keep records basically of  
17 prescriptions ordered, filled and distributed within Grand  
18 Strand Hospital?

19 **A:** Correct. It's all in the electronic medical record.

20 **Q:** Okay, thank you. And is there any way to alter those  
21 records?

22 **A:** Not to the best of my knowledge, everything there's a  
23 paper trail like if I would go in and change a dosage or  
24 something like that I'm able to do that but there's a paper  
25 trail that says I did it at such a date, such a time. So,

1 there's a paper trial for everything.

2 **Q:** Okay. Is it possible to delete records?

3 **A:** Not to the best of my knowledge.

4 **Q:** Can you retrieve a canceled an order?

5 **A:** Can I retrieve a canceled order? Yes, I can if it's for a  
6 medication.

7 **Q:** Okay, why would you do that?

8 **A:** I might be looking for maybe an order got canceled in  
9 error and I might need to retrieve it to find out what  
10 happened.

11 **Q:** And the system that you have access to, you have to know  
12 how to run that system as part of your duties.

13 **A:** I know how to use it. We have an IT Department that  
14 supports the use of the medication system.

15 **Q:** Okay. And that system records all encounters with  
16 patients within Grand Strand?

17 **A:** Absolutely.

18 **Q:** Those records are kept in the ordinary course of business  
19 at Grand Strand Hospital?

20 **A:** Yes.

21 **Q:** Alright, as part of your duties within your position, did  
22 you conduct a search of the computer data base for names  
23 provided to you by Investigator Strickland in regards to this  
24 matter?

25 **A:** Yes, I did.

1 Q: Specifically, did you research the data base for records  
2 relating to a Kristie Shaw?

3 A: I need to pull my notes.

4 Q: Okay, what are those notes from?

5 A: It's a copy of the e-mail that I sent with the information  
6 on it.

7 Q: Okay.

8 A: Kristy Shaw, yes, I did. There were no encounters at  
9 Grand Strand.

10 Q: So, you found no indication that she'd been a patient at  
11 Grand Strand?

12 A: That is correct. Inspector Strickland asked for the time  
13 period of 2010 through January of 2017 and so that's the time  
14 period which I did research and I found no encounters, and  
15 that would include even coming in to have a lab or an x-ray or  
16 anything.

17 Q: Okay, thank you for that clarification. How about with  
18 regards to records relating to an Alexandria Chavis? Did you  
19 search the data base for that name?

20 A: Yes, I did. There was no encounters at Grand Strand.

21 Q: That's -- to keep you from being repetitive, that's the  
22 same thing that you just said.

23 A: Yes, it is. I'm sorry. I'm reading on what I wrote.

24 Q: No, you're fine. Did you also search the data base for  
25 records relating to Renee Jordan?



1   **A:**  Renee Jordan, yes.

2   **Q:**  Did you find any encounters there?

3   **A:**  I did.  Renee Jordan was a patient in our emergency  
4 department twice in 2013 and once in 2014.  I have the  
5 specific dates if that's of interest.

6       **MR. HUMPHRIES:**  I'm going to object as to relevance.  I  
7 think that would just speed us up.  I think that's clearly  
8 outside ---

9   **BY MR. OSKIN:**

10   **Q:**  It's unnecessary for those dates but I appreciate your  
11 transparency.

12   **A:**  Okay.

13   **Q:**  So, it's your testimony to this jury in your data base  
14 search of the names given to you that they were not patients  
15 of Grand Strand prior to 2016.  I'm not trying to speak for  
16 you.  I apologize.  I'm trying to stay within the objection.

17   **A:**  Okay.  Renee Jordan was a patient at Grand Strand.

18   **Q:**  Right.

19   **A:**  The other two were not.

20   **Q:**  Okay.  Was she a patient in 2016 or no?

21   **A:**  In 2016, no.

22   **Q:**  Okay, thank you.  No further questions from the State.  
23 Please answer any questions from defense.

24       **MR. HUMPHRIES:**  I don't have any questions.  Thank you,  
25 ma'am.

1           **THE COURT:** You may step down.

2           **MR. OSKIN:** The State asks that she be released from her  
3 subpoena, Your Honor.

4           **MR. HUMPHRIES:** No objection.

5           **THE COURT:** Alright, without objection. You may go.  
6 Thank you.

7           **MR. OSKIN:** The State would next call Mr. Leonard  
8 Cummings, please.

9                                   **LEONARD CUMMINGS, HAVING BEEN FIRST**  
10 **DULY SWORN, TESTIFIED AS FOLLOWS:**

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

12           **MR. CUMMINGS:** Leonard Cummings. C-U-M-M-I-N-G-S.

13 **DIRECT EXAMINATION OF MR. CUMMINGS BY MR. OSKIN:**

14 **Q:** Mr. Cummings, what do you do for living, sir?

15 **A:** I'm a pharmacist for Walgreens.

16 **Q:** What is your educational background to become a  
17 pharmacist?

18 **A:** I graduated from MUSC in Charleston in 2006.

19 **Q:** Were you working as a pharmacist back in October of 2016?

20 **A:** I was.

21 **Q:** Alright, which pharmacy were you working at, sir?

22 **A:** Walgreens in Conway.

23 **Q:** Is that the one on Church Street?

24 **A:** On Church Street.

25 **Q:** Okay. What are your daily duties at the pharmacy?

1   **A:** Taking prescriptions that people bring in, taking phone  
2   calls, consult patients.

3   **Q:** Those were the same duties you were doing back in October  
4   of '16?

5   **A:** Right. Yes, sir.

6   **Q:** Alright. Do you at times take prescription orders?

7   **A:** I do.

8   **Q:** Excuse me. Do you take prescription orders?

9   **A:** Over the phone?

10   **Q:** In general?

11   **A:** Yes.

12   **Q:** Okay. What's your procedure for taking in orders, sir,  
13   whether it be by phone or?

14   **A:** Well, if it's a walk in they will have a paper  
15   prescription. I just take it in, look at it, then I fill it.  
16   If it's a call in I get the patient's name, date of birth,  
17   drug, directions, quantity, refills, all that kind of stuff.

18   **Q:** Okay. And what information is required from a doctor in  
19   order to validate and therefore let you process that  
20   prescription.

21   **A:** I would need a patient's name, date of birth, whatever  
22   drug he's prescribing, directions for that drug, quantity, any  
23   refills, of course the doctor's name, sometimes a phone  
24   number, DEA number.

25   **Q:** Okay.

1           **MR. OSKIN:** If I may approach the witness, Your Honor.

2           **THE COURT:** Certainly.

3 **BY MR. OSKIN:**

4 **Q:** Mr. Cummings, I'm showing you what's been stipulated into  
5 evidence as State's Exhibit Number Two. I'll ask if you  
6 recognize that.

7 **A:** Yes.

8 **Q:** What is that a copy of, sir?

9 **A:** It's a prescription for Triazolam. I filled it back in,  
10 it looks like 2016.

11 **Q:** Is Triazolam a controlled substance?

12 **A:** It is.

13 **Q:** Do you know its schedule?

14 **A:** I'm not positive. It's probably a three or four. I'm not  
15 sure.

16 **Q:** Is that why you take a DEA number?

17 **A:** Right.

18 **Q:** And do you see your initials anywhere on that form?

19 **A:** I do. Yes, sir.

20 **Q:** And on this form does it appear that all required  
21 information was given?

22 **A:** Yes.

23 **Q:** Alright. What's the doctor's name or the alleged doctor's  
24 name on that copy?

25 **A:** John Webb.

1 **Q:** And are you able to tell if that prescription was filled?

2 **A:** Yes.

3 **MR. OSKIN:** Your Honor, understanding this evidence has  
4 been stipulated and admitted, therefore, admitted into  
5 evidence.

6 **THE COURT:** Alright, what's the exhibit?

7 **MR. OSKIN:** State's Exhibit Number Two.

8 **THE COURT:** Alright. Very good. State's Exhibit Number  
9 Two is admitted without objection.

10 **(STATE'S EXHIBIT NUMBER TWO IS**  
11 **ADMITTED INTO EVIDENCE.)**

12 **MR. OSKIN:** Thank you, Your Honor.

13 May I approach one more time? This will be the last  
14 question. I'm sorry.

15 **BY MR. OSKIN:**

16 **Q:** Mr. Cummings, I'll just have you reference the date that  
17 that prescription was filled, please, sir.

18 **A:** Looks like it was called in on 10-27-2016. It looks like  
19 the fill date is 10-28-2016. Taken during the night shift so  
20 that could have been the overlap.

21 **Q:** Okay. Thank you for that clarification. That answers all  
22 the questions for me, Mr. Cummings. Please answer any  
23 questions Mr. Humphries may have.

24 **THE COURT:** Cross Examination.

25 **MR. HUMPHRIES:** Very briefly.

1 **CROSS EXAMINATION OF MR. CUMMINGS BY MR. HUMPHRIES:**

2 **Q:** Good afternoon, Mr. Cummings, my pharmacist. Alright, on  
3 this State's Two there is a DEA number; is that correct?

4 **A:** Right here at the bottom.

5 **Q:** Yep. And that is for Doctor Webb.

6 **A:** Yes, sir.

7 **Q:** Appears to be legitimate.

8 **A:** Yes, sir.

9 **Q:** And the information that you received -- and this was a  
10 call in or was this a paper?

11 **A:** That is a call in.

12 **Q:** Okay. And again, what kind of information would you  
13 receive from the doctor? It's not always a doctor that calls  
14 it in; is that correct?

15 **A:** Not always.

16 **Q:** But in this case, a doctor.

17 **A:** Where it says M.D. there. That's who called it in.

18 **Q:** Yep. So, my client actually called it in.

19 **A:** Right.

20 **Q:** Based on this document.

21 **A:** Yes, sir.

22 **Q:** Right. And tell me again, what information do you take  
23 in? Because on the phone it's a bit different than if you  
24 take a paper prescription in; is that correct?

25 **A:** Correct.

1 Q: Okay. So, what information do you receive from the doctor  
2 calling in the prescription?

3 A: Like I said before, the patient's name, most often date of  
4 birth or phone number, some way we can search the data base  
5 for the correct patient. The drug, directions, quantity,  
6 sometimes they leave a phone number or DEA number but that's  
7 not always done, and of course whoever the doctor is.

8 Q: Right. But in this case it was done.

9 A: Correct.

10 Q: Okay. And tell the jury what that drug actually is. Is  
11 there another name for that drug besides ---

12 A: Triazolam, the brand name would be Halcion.

13 Q: And what does it do?

14 A: A lot of times it used for anxiety or for sleep.

15 Q: Okay. So, a sleep med.

16 A: Right.

17 Q: It's definitely not a Schedule I or Schedule II narcotic.

18 A: It is not.

19 Q: Okay. And would it surprise you if I told you it was a  
20 Schedule IV?

21 A: It wouldn't surprise me. I was guessing III or IV, I  
22 wasn't positive.

23 Q: Okay.

24 MR. HUMPHRIES: That's all I have.

25 THE COURT: Reexamine.

1           **MR. OSKIN:** Court's indulgence, Your Honor.

2           **THE COURT:** Okay.

3           **MR. OSKIN:** Nothing from the State from this witness,  
4 Your Honor. The State asks that he be released from his  
5 subpoena.

6           **MR. HUMPHRIES:** No objection.

7           **THE COURT:** Without objection. You may be excused.  
8 Thank you, sir.

9           **MR. OSKIN:** Your Honor, at the appropriate time the State  
10 would next call Ms. Kate Birringer.

11                           **KATE BIRRINGER, HAVING BEEN FIRST**  
12 **DULY SWORN, TESTIFIED AS FOLLOWS:**

13           **CLERK:** State your name and spell your last name.

14           **MS. BIRRINGER:** First name is Kate. Last name is  
15 Birringer. B-I-R-R-I-N-G-E-R.

16 **DIRECT EXAMINATION OF MS. BIRRINGER BY MR. OSKIN:**

17 **Q:** Good afternoon, Ms. Birringer. What do you do for a  
18 living, ma'am?

19 **A:** I'm a Pharmacy Manager at the CVS is downtown Conway.

20 **Q:** Okay. What's your educational background to be able to do  
21 that type of work?

22 **A:** I have a Pharm D. from the University of Pittsburg.

23 **Q:** Okay. And how long have you been a Pharm. D?

24 **A:** Since 2010.

25 **Q:** Alright, so is it safe to say you were working as a



1 pharmacist in July of 2016?

2 **A:** Yes.

3 **Q:** Alright, and do you recall what pharmacy you were working  
4 at?

5 **A:** The CVS in downtown Conway.

6 **Q:** Is that the one you still work at?

7 **A:** Yeah.

8 **Q:** What are your daily duties as a pharmacist, ma'am?

9 **A:** Fill prescriptions, checking for interactions,  
10 immunizations, consultations, any kind of advice, over the  
11 counter medications, everything.

12 **Q:** And it may be repetitive but do you at times take in phone  
13 in prescriptions?

14 **A:** All the time.

15 **Q:** Alright, what's the procedure for that, ma'am?

16 **A:** If they're actually on the phone versus voice mail it's a  
17 little different because you can't get all the information  
18 from a voicemail. You get the patient's name, date of birth,  
19 document the date and time you receive the call in or  
20 voicemail because it's left on our voicemail the exact date  
21 and time, medication, the strength, quantity, instructions,  
22 number of refills, doctor's name, who it is whether it's a  
23 doctor or an advocate for the doctor, and patient -- I'm  
24 sorry, doctor's information whether they give their phone  
25 number, their MPI, their DEA or their state license.

1 Q: I think you covered the bulk of it there, which I  
2 appreciate. What's some other information that's required  
3 from a doctor in order for you to be able to validate that  
4 prescription and then fill it?

5 A: Typically we do check for a DEA number if it's a  
6 controlled substance or we would ask for an MPI. That's  
7 usually all. And then with the office phone number, we have  
8 caller ID, so we can tell if it's being called from the actual  
9 office.

10 Q: Alright, you look up patient names, all of those  
11 preliminary things. Is there any extra care in regards to a  
12 controlled substance in your line of work?

13 A: We do check the South Carolina PMP, the prescription  
14 monitoring program, for almost every controlled substance that  
15 we fill, especially for narcotics so we can see if the  
16 medication is a duplication or if the patient is going to more  
17 than one pharmacy, which is unfortunately very common.

18 Q: Do controlled substances have a greater tendency for  
19 abuse?

20 A: Of course.

21 Q: Okay.

22 MR. OSKIN: If I may approach the witness, Your Honor.

23 THE COURT: Certainly.

24 BY MR. OSKIN:

25 Q: I'm showing you what's been stipulated to by defense and

1 therefore entered into evidence as State's Exhibit Number  
2 Three. Do you recognize that?

3 **A:** Yes.

4 **Q:** What is that?

5 **A:** It's a called in prescription from July 7<sup>th</sup>, 2016.

6 **(STATE'S EXHIBIT NUMBER THREE IS**  
7 **ADMITTED INTO EVIDENCE.)**

8 **Q:** That was called in by whom?

9 **A:** We have M.D. on there, so it would be Doctor Webb.

10 **Q:** Okay, and you filled that?

11 **A:** I did not fill it. It was filled by a different  
12 pharmacist. This is her signature, so it was called in at  
13 8:24PM and we close at 9 so it was probably left for the next  
14 day. This was 7-7 and she signed here 7-8 with her license  
15 number and her signature.

16 **Q:** Did the caller leave all required information on that?

17 **A:** I think he left an MPI and we had to add the DEA. It's  
18 required by the State of South Carolina on any controlled  
19 substance.

20 **Q:** Alright. Again, that prescription was filled on what  
21 date?

22 **A:** Filled on 7-8-2016.

23 **Q:** And specifically with regards to that prescription, what  
24 was that drug?

25 **A:** That's phentermine. The brand name is Adipex. It's used

1 for weight loss.

2 **Q:** Okay, when defense counsel or the State references the  
3 diet pill, that's what that is?

4 **A:** Yes.

5 **Q:** Still a controlled substance, though.

6 **A:** It is. I think it might be a IV, maybe a III, but  
7 probably a IV.

8 **Q:** And with regards to CVS keeping that record, that's part  
9 of your duties as a pharmacist?

10 **A:** Yes.

11 **Q:** And is it part of your duties as a practitioner to have to  
12 keep that record and be able to produce it?

13 **A:** Yes.

14 **Q:** That only applies to you, the pharmacist, correct?

15 **A:** To keep the records?

16 **Q:** For that prescription, that specific record itself?

17 **A:** Yes. I have to keep them for 10 years.

18 **Q:** Okay. But what I'm asking is, does the pharmacist keep it  
19 and does the doctor also keep it?

20 **A:** I would hope the doctor also keeps it.

21 **Q:** They're supposed to as a practitioner.

22 **A:** Yeah. I mean, I would hope they do. We have to.

23 **Q:** Nothing further from me. Please answer any questions from  
24 Mr. Humphries.

25 **THE COURT:** Cross examination.

1 **CROSS EXAMINATION OF MS. BIRRINGER BY MR. HUMPHRIES:**

2 **Q:** I'm sure CVS is awesome too, by the way.

3 **A:** I heard you like Walgreens better.

4 **Q:** Alright, so let me ask you this as it relates to ---

5 **A:** That one's mine.

6 **Q:** This one's yours. Okay. As it relates to this document,  
7 which is -- I knew I should have got my glasses. Is that  
8 three?

9 **A:** This is three. Yes, sir.

10 **Q:** Awesome. Had this prescription been abusive in anyway,  
11 that is if it had been prescribed within another treatment  
12 period of another -- let me put it another way. If they were  
13 pill shopping, you wouldn't have filled that prescription;  
14 would you?

15 **A:** Well, that medication is not available on the PMP still.

16 **Q:** Okay.

17 **A:** So, I would not be able to tell if they were prescription  
18 shopping.

19 **Q:** Okay.

20 **A:** Also, that medication is never covered by most insurances  
21 so they pay out of pocket so it's even harder to check for  
22 prescription shopping because it doesn't ding up against an  
23 insurance claim saying they got it at Walgreens yesterday and  
24 they are getting it today at CVS. So, it's actually a very  
25 easy medication to pharmacy shop with.

1 Q: Let me ask you, is there anything indicated by this script  
2 that would indicate that such a thing was happening?

3 A: There's no way to tell that with a call in, no.

4 Q: Right. Okay. So, there's nothing irregular about this  
5 prescription?

6 A: The time it was called in is pretty irregular.

7 Q: Tell me what the time is.

8 A: 8:24PM.

9 Q: Okay. Might that indicate -- well, let me ask you this.  
10 Do you get calls at times from doctors outside regular office  
11 hours?

12 A: All the time.

13 Q: Yeah. Okay. And that's essentially what this is, outside  
14 office hours.

15 A: Yes.

16 Q: Okay. Thanks.

17 MR. OSKIN: Very briefly, Your Honor.

18 THE COURT: Certainly.

19 REDIRECT EXAMINATION OF MS. BIRRINGER BY MR. OSKIN:

20 Q: This is just a follow up to this last little bit there.  
21 Do doctors typically call in prescriptions for diet pills at  
22 9:00, or roughly thereabouts?

23 A: No.

24 Q: It would be more -- I don't want to speculate. The answer  
25 was no; is that correct?

1 **A:** Right. The answer is no.

2 **Q:** Thank you, ma'am.

3 **MR. OSKIN:** Nothing further from the State. We'd ask  
4 that she be released from her subpoena.

5 **MR. HUMPHRIES:** No objection.

6 **THE COURT:** Alright, without objection. You may be  
7 excused. Thank you very much.

8 **MR. OSKIN:** Your Honor, at this time the State would next  
9 call Ms. Karissa Proctor.

10 **KARISSA PROCTOR, HAVING BEEN FIRST**  
11 **DULY SWORN, TESTIFIED AS FOLLOWS:**

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

13 **MS. PROCTOR:** Sure. Karissa Proctor. P-R-O-C-T-O-R.

14 **DIRECT EXAMINATION OF MS. PROCTOR BY MR. OSKIN:**

15 **Q:** Ms. Proctor, good afternoon. I appreciate you joining us.  
16 What do you do for a living, ma'am?

17 **A:** I'm a pharmacist.

18 **Q:** Okay. You're currently working as a pharmacist?

19 **A:** I am. I work at Publix in Murrell's Inlet.

20 **Q:** Okay, were you working as a pharmacist back in June of  
21 2016?

22 **A:** Yes, I was.

23 **Q:** And which pharmacy, ma'am?

24 **A:** I was at K-Mart in Conway.

25 **Q:** And Conway is in Horry County?

1 **A:** Yep.

2 **Q:** Okay. I assume it applies to your daily duties no matter  
3 what, but were your daily duties as a pharmacist at the  
4 location at K-Mart?

5 **A:** Sure. We take prescription orders, we check for drug  
6 interactions, dosing, consult patients, that's about it.

7 **Q:** What's the procedure for that, ma'am?

8 **A:** As far as the prescription orders?

9 **Q:** Yes, ma'am, as it applies to how they come in contact with  
10 you and ---

11 **A:** Sure, we can take written prescriptions, which the patient  
12 brings in. There's electronic prescriptions, which are sent  
13 through the providers office. And we also take telephone  
14 prescriptions.

15 **Q:** Much like we've heard earlier, same requirements with  
16 regards to the patient's name?

17 **A:** Yes. Name, date of birth, drug, dosing, quantity,  
18 provider's name, phone number and a DEA number.

19 **Q:** Alright.

20 **MR. OSKIN:** If I may approach the witness, Your Honor.

21 **THE COURT:** Certainly.

22 **BY MR. OSKIN:**

23 **Q:** Ms. Proctor, I'm showing you what's been stipulated to by  
24 defense counsel and entered into evidence as State's Exhibit  
25 Number Four. Do you recognize that?



1                                   **(STATE'S EXHIBIT NUMBER FOUR IS**  
2                                   **ADMITTED INTO EVIDENCE.)**

3 **BY MR. OSKIN:**

4 **A:** Yes.

5 **Q:** What is that ma'am?

6 **A:** That is a telephone prescription from Doctor John Webb for  
7 Kristy Shaw.

8 **Q:** Alright, was that called in to your pharmacy at that time?

9 **A:** It was. It looks like June 5<sup>th</sup> of 2016 at 8:47PM.

10 **Q:** Alright and that's a fair and accurate copy?

11 **A:** It is.

12 **Q:** Does that prescription order indicate how the prescription  
13 was placed?

14 **A:** Yes. It was a telephone prescription.

15 **Q:** Does it appear that all of the required information was  
16 give?

17 **A:** Yes.

18 **Q:** Okay. What's the doctor's name appear to be on that  
19 prescription?

20 **A:** Doctor John Webb.

21 **Q:** And I believe you testified to it, but are you able to  
22 tell whether it was filled or not?

23 **A:** Yes, it is filled, or was filled.

24 **Q:** And it was called in at what time?

25 **A:** 8:47PM.

1 Q: Let's elaborate on what we heard a little bit further. Is  
2 that uncommon to be called in that late?

3 A: It is uncommon for this particular medication.

4 Q: Okay. Do you recognize that number to be from any medical  
5 facility in your experience working as a pharmacist?

6 A: Not from my experience, no.

7 Q: And the drug that prescription was filled for, what is  
8 that?

9 A: It is phentermine, which is what we discussed before, a  
10 diet pill.

11 Q: And that is a controlled substance?

12 A: It is a controlled substance.

13 Q: Greater level of care handling controlled substances?

14 A: Yes.

15 Q: As a pharmacist?

16 A: Yes.

17 Q: Ms. Proctor, please answer any questions from Mr.  
18 Humphries.

19 A: Okay.

20 **CROSS EXAMINATION OF MS. PROCTOR BY MR. HUMPHRIES:**

21 Q: No doubt that Doctor Webb identified himself ---

22 A: Yes.

23 Q: --- by virtue of his name and the DEA number?

24 A: Yes, sir.

25 Q: Okay. Thank you.

1 **A:** You're welcome.

2 **THE COURT:** Reexamine.

3 **MR. OSKIN:** Nothing from the State, Your Honor. We ask  
4 that she be released from her subpoena.

5 **THE COURT:** Very good.

6 **MR. HUMPHRIES:** No objection.

7 **THE COURT:** Alright. Without objection you are released.  
8 Thank you, ma'am.

9 **MR. OSKIN:** Your Honor, if we may approach briefly.

10 **THE COURT:** Certainly.

11 **(BENCH CONFERENCE)**

12 **THE COURT:** Alright. Madam forelady, ladies and  
13 gentlemen of the jury, the next witness will take a few  
14 minutes so I'm going to suggest you take a break at this time  
15 and then we'll finish up with the testimony. Very good.  
16 Again, do not undertake the discussion of the case among  
17 yourselves in any way.

18 **(JURY RETIRES TO JURY ROOM AT 1:45PM)**

19 **THE COURT:** Alright, we will take a break. I have  
20 prepared a proposed verdict for I need you to look at. So,  
21 we'll see what we've got. Alright, we'll stand at ease for a  
22 few minutes.

23 **MR. HUMPHRIES:** Thank you, Judge.

24 **MR. OSKIN:** Thank you, Your Honor.

25 **(RECESS)**

1 (JURY ENTERS COURTROOM AT 2:08PM)

2 THE COURT: Let the record reflect that the jury and  
3 alternate are in the jury box.

4 Alright, you may proceed.

5 MR. MARTIN: Thank you, Your Honor. The State's next  
6 witness we will call is Investigator Derek Strickland.

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

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

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

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

13 THE COURT: You may proceed.

14 DIRECT EXAMINATION OF INVESTIGATOR STRICKLAND BY MR. MARTIN:

15 Q: Investigator Strickland, where do you work?

16 A: I work with South Carolina Department of Health and  
17 Environmental Control, the Bureau of Drug Control. And the  
18 Bureau of Drug Control is a law enforcement group within DHEC  
19 that employees pharmacists to enforce and regulate the  
20 controlled substance laws within the State.

21 Q: So, you are in fact a pharmacist in addition to being an  
22 investigator?

23 A: Correct.

24 Q: How long have you been with DHEC?

25 A: Four and a half years.

1 Q: What are your -- specifically what are your current duties  
2 with DHEC?

3 A: Currently we investigate criminal activity in regards to  
4 controlled substances as well as perform inspections on  
5 registrants being anybody who can prescribe or possess a  
6 controlled substance in the State of South Carolina, likewise  
7 to a State level DEA position.

8 Q: And as an investigator with DHEC were you involved in the  
9 investigation and later arrest of the defendant John Webb from  
10 January 2017 to March 2017?

11 A: I was.

12 Q: How were you brought into the case?

13 A: I was notified by an investigator with the South Carolina  
14 Board of Medical Examiners the LLR and they had an open  
15 investigation on Mr. Webb and noticed some questionable  
16 controlled substance prescribing for immediate family members  
17 and was notified that the Bureau of Drug Control may want to  
18 look into it.

19 Q: And let's back up for a second just for the jury. What is  
20 a controlled substance?

21 A: A controlled substance is classified by DEA and DHEC as  
22 having a high potential for abuse or dependency whether it be  
23 physical or psychological.

24 Q: What must incur in order for a medical practitioner to  
25 prescribe a controlled substance to a patient?

1 **A:** Specifically speaking of a medical practitioner you must  
2 have a valid South Carolina Medical License, you must have a  
3 Federal DEA number and you also must have a Bureau of Drug  
4 Control permit.

5 **Q:** Must one have a valid patient/practitioner relationship?

6 **A:** Correct. In order to prescribe a controlled substance a  
7 valid patient/practitioner relationship is required. And  
8 controlled substance can only be issued for a legitimate  
9 purpose.

10 **Q:** And how would someone obtain this valid  
11 patient/practitioner relationship?

12 **A:** Essentially as you may have heard in the recording,  
13 there's documentation that needs to take place. An  
14 examination needs to be done with the so-called patient. And  
15 it must be documented. The physician must be available for  
16 follow up care and documentation is essentially the key.

17 **Q:** How would a medical practitioner document?

18 **A:** We at the Board of -- at DHEC don't have any specific  
19 guidelines as far as documentation, just has to be documented.  
20 It can be in a memorandum of such as long as the document is  
21 readily available and upon request provided to inspector, no  
22 requirements going forward.

23 **Q:** And you say readily available, does that also mean the  
24 documentation must be kept and maintained by the physician?

25 **A:** Correct. By regulation with DHEC the records must be

1 readily available, maintained by the registrant. It is the  
2 responsibility of the registrant being the registration holder  
3 to maintain those records.

4 **Q:** Investigator Strickland, you are a pharmacist.

5 **A:** Uh-huh. (Affirmative response).

6 **Q:** We heard testimony today from other pharmacists about them  
7 keeping records. Who all has to keep a record?

8 **A:** Anybody who is, I guess you could think of it in two  
9 separate ways in two tiers. As you heard one of the  
10 pharmacists testify to, pharmacies are required to keep  
11 records. One of our job duties is to go in and inspect  
12 pharmacies. Any pharmacy that you see holds a DHEC Drug  
13 Control permit. Those pharmacies are required to keep records  
14 on their end as to what is filled and ultimately dispense to  
15 the end user is what it's called, the patient being the end  
16 user. On the beginning end of that the physician is required  
17 to keep records as well of what they have documented as far as  
18 a patient/practitioner relationship in where they see the  
19 patient, how they see the patient, what the history is with  
20 the patient and going forward what the prescribing of that  
21 patient should be. So, ultimately there's two levels of  
22 documentation. The requirement -- both requirements are upon  
23 the registrant, the physician being a registrant, the pharmacy  
24 being a registrant. They have their own independent documents  
25 that they have to retain.

1 **Q:** So, just to wrap our heads around this, just because a  
2 pharmacist keeps a record does that exempt the physician  
3 himself or herself from keeping a record?

4 **A:** It does not.

5 **Q:** How long should a practitioner keep these prescription  
6 documentation?

7 **A:** Bureau of Drug Control requires two years on  
8 documentations, other may -- the Medical Board may require  
9 more but as far as the Bureau of Drug Control we require two  
10 years.

11 **Q:** If a person who is issuing a prescription, that person  
12 omits the information from his documentation or even fails to  
13 document it at all what happens?

14 **A:** It's against the law.

15 **Q:** What happens if the person fails to keep or lose or  
16 maintain this information?

17 **A:** It's, again, against the law.

18 **Q:** And from a practical standpoint, why is it required to  
19 keep records?

20 **A:** The main reason would be patient safety. If a patient has  
21 been given some sort of a prescription or written a  
22 prescription that's not documented in a patient chart  
23 whatsoever whether it be what type of controlled substance,  
24 many controlled substances can affect your body. Most of time  
25 when people think of controlled substances, they think of pain



1 medicine but in this situation what we're talking about is  
2 phentermine. Phentermine is a diet pill. But more than it  
3 just being a diet pill it can increase heart rate.  
4 Phentermine is highly regulated with high blood pressure. It  
5 can increase blood pressure. It can cause heart palpitations  
6 and if it's not documented and not documented properly in a  
7 chart for a patient, patient safety definitely becomes a  
8 concern when they go further into another physician let's say.  
9 So, definitely patient safety is primary concern.

10 **Q:** I apologize for interrupting. We've also heard testimony  
11 about Triazolam. Why is it pertinent?

12 **A:** Same as I testified before, controlled substances itself  
13 are highly -- have a high potential for abuse and dependency.  
14 Triazolam is typically used, in most of my experience as a  
15 pharmacist and in this job, for dental sedation. You know, as  
16 it is a sedative agent but usually for dental procedures. Not  
17 often, I have seen it a few times, but not often is it used on  
18 a daily basis.

19 **Q:** You previously testified to being involved in the  
20 investigation and the arrest of the defendant.

21 **A:** Uh-huh. (Affirmative response).

22 **Q:** Did you find any prescriptions that were filled where he  
23 failed to document this valid patient/practitioner  
24 relationship?

25 **A:** I did. Throughout my investigation I ultimately found

1 that 19 prescriptions were authorized by the defendant for  
2 patients that I was unable to determine a valid  
3 patient/practitioner relationship.

4 **Q:** In this case at hand how many patients did he fail to  
5 properly document?

6 **A:** In total, if I may look at my records.

7 **Q:** Yes, and I'm referring to the three indictments that we  
8 have today.

9 **A:** Okay.

10 **Q:** Specifically, regarding those three, how many patients  
11 were you ---

12 **A:** That would be three patients.

13 **Q:** Okay. Did all of this that we're talking about occur in  
14 Horry County?

15 **A:** Of the three patients, yes it did.

16 **Q:** And let's talk about them for a second.

17 **A:** Uh-huh. (Affirmative response).

18 **Q:** What was the first one that you found?

19 **A:** First I have is Kristie Shaw. It was the prescription for  
20 Phentermine.

21 **Q:** And who is Kristie Shaw?

22 **A:** Kristie Shaw is, my understanding, Mr. Webb's wife or ex-  
23 wife now, wife at the time.

24 **Q:** You mentioned Phentermine.

25 **A:** Uh-huh. (Affirmative response).

1 Q: Is that a controlled substance?

2 A: Phentermine is a Schedule IV controlled substance.

3 Q: Were there any refills listed on the prescription?

4 A: The prescription in question from K-Mart was -- yes, there  
5 was. It was Phentermine with two refills.

6 Q: Is that significant?

7 A: Yeah, absolutely.

8 Q: Why is that?

9 A: Well, it shows a continuation of care so to speak. It  
10 wasn't just a one-time occurrence. It was a prescription to  
11 be filled ultimately three times.

12 Q: What was the date of that prescription?

13 A: That prescription was dated July 5<sup>th</sup>, 2016.

14 Q: And was it filled and if so, where?

15 A: It was filled. It was filled at K-Mart Pharmacy.

16 Q: Were you able to determine who prescribed the controlled  
17 substance?

18 A: The document shows that John Webb prescribed it.

19 Q: After discovering these prescriptions, or this  
20 prescription, did -- let me back up, I'm getting ahead of  
21 myself here. Who was the second person that you ---

22 A: The second person I have is Ms. Renee Jordan.

23 Q: And what was her relationship to the defendant?

24 A: My understanding that Renee Jordan is a co-worker of Ms.  
25 Kristie Shaw.

1 Q: What was the controlled substance?

2 A: Again, that controlled substance was Phentermine.

3 Q: And the schedule?

4 A: Schedule IV controlled substance.

5 Q: What was the date?

6 A: That one was dated July 7<sup>th</sup>, 2016.

7 Q: And where was it filled?

8 A: That was filled at CVS Pharmacy here in Conway, which also  
9 had a refill on it.

10 Q: One refill?

11 A: One refill, yes, sir.

12 Q: And you were able -- I know I may sound repetitive, but  
13 you were able to determine who called in that prescription?

14 A: I was. It was noted that John Webb called in the  
15 prescription. And also, I guess that I should note that one  
16 both of those prescriptions his cell phone number was  
17 documented as the phone number calling it in.

18 Q: And since we're talking about both of those, do you know  
19 the time that it was called in?

20 A: It looks like the K-Mart prescription shows 8:47PM. CVS  
21 prescription show 8:24PM.

22 Q: Investigator Strickland, you're a pharmacist, is that  
23 unusual?

24 A: Typically, it is not like a prescriber to phone it in them  
25 self that late at night for these drugs. Correct.

1 Q: Why is that?

2 A: It's not an emergent drug. It's a diet pill. It's used  
3 for weight loss. It's not a -- someone's not having a  
4 migraine. Someone's not in -- having desperate pain.  
5 Someone's not having a horrible cough. It's a diet pill and  
6 people typically wait until the next day during business  
7 hours.

8 Q: And lastly, who was the third individual that you were  
9 able to find prescriptions?

10 A: The third prescription I have is for Alexandria Chavis.  
11 It's my understanding that is Mr. Webb's stepdaughter, Kristie  
12 Shaw's daughter.

13 Q: His stepdaughter at the time?

14 A: Correct, yes.

15 Q: And once again, what was the controlled substance?

16 A: That was Triazolam.

17 Q: And what's the schedule?

18 A: Schedule IV controlled substance.

19 Q: And refills for that?

20 A: There were no refills noted on this one.

21 Q: Where did you say this was filled?

22 A: This was filled at Walgreens in Conway, Horry County.

23 Q: And the date?

24 A: October 27<sup>th</sup>, 2016.

25 Q: And what is that drug typically used for?

1 **A:** Typically, a sedative agent. I would say a highly  
2 sedative agent that this typically used for dental procedures.

3 **Q:** Anything unusual about that script considering the  
4 controlled substance?

5 **A:** Someone of her age, I wouldn't typically see that  
6 prescribed for someone born in '95. Other than that, it's  
7 just not something that's used outside of procedures.

8 **Q:** After discovering these prescriptions that we've just  
9 talked about; did you attempt to find documentation of a valid  
10 patient/practitioner relationship?

11 **A:** I did.

12 **Q:** What did you do?

13 **A:** I contacted Ms. Connie Williams as you've heard earlier.  
14 We reviewed records from the inpatient area of Grand Strand.  
15 No records were found for these patients. Then I contacted  
16 Mr. Billy Williams (sic) would also -- you also heard. He and  
17 I reviewed records from Grand Strand Primary Care. None of  
18 those records were found as well.

19 **Q:** And just for clarification, I believe his name is Billy  
20 Davis.

21 **A:** Oh, I'm sorry. Correct, Billy Davis.

22 **Q:** Do you remember, just to recap, Grand Strand Medical  
23 Center and Grand Strand Primary Care.

24 **A:** Correct.

25 **Q:** Did you find any of the required patient records or

1 documentation whatsoever?

2 **A:** No, I did not.

3 **Q:** During your investigation you did speak with the  
4 defendant, correct?

5 **A:** I did, yes.

6 **Q:** And you were present in the courtroom when we played the  
7 recording that both parties have previously stipulated that  
8 was voluntarily given and placed into evidence, State's  
9 Exhibit One?

10 **A:** Correct, I was.

11 **Q:** During this conversation did he appear to be under the  
12 influence of anything?

13 **A:** He did not.

14 **Q:** He appeared to understand everything you were saying?

15 **A:** He did.

16 **Q:** Would you have talked with him if that was an issue?

17 **A:** If he was impaired, not at all, no.

18 **Q:** As far as the recording itself, I didn't alter or edit it  
19 in anyway.

20 **A:** It is not.

21 **Q:** It appeared to be a fair and accurate representation of  
22 what happened on February 14<sup>th</sup>?

23 **A:** Correct, it was.

24 **Q:** After the interview there was some reference made to the  
25 home in Hartsville.

1   **A:**   Yes.

2   **Q:**   Did you go there?

3   **A:**   I did.   After we left the interview with Mr. Webb and his  
4   attorney, Humphries, I drove to Hartsville from Myrtle Beach,  
5   approximately about two hours or so and followed him to his  
6   home there.

7   **Q:**   After going there was he able to provide you with any  
8   valid documentation?

9   **A:**   No, he did not.   No patient records were found while we  
10   were there.

11   **Q:**   Did you find anything relevant whatsoever?

12   **A:**   Not relevant to patient records.   We did find some  
13   documentation that he showed that, again, proved that he knew  
14   he had to keep records.   I think one of them was a document  
15   from school.   I think another was an e-mail from Grand Strand  
16   explaining the procedure of keeping records.   But no patient  
17   records were found, no.

18   **Q:**   So, you listened to the statement that we just talked  
19   about.   Do you remember him mentioning that the documents may  
20   have been lost or destroyed by his wife?

21   **A:**   I do, yeah.

22   **Q:**   What county is the Hartsville home located?

23   **A:**   Darlington County.

24   **Q:**   Did you ever check Darlington County to see if the  
25   defendant ever filed a police report there for missing or



1 stolen medical documents?

2 **A:** I did. I checked with Darlington County Sherriff's Office  
3 as well as Hartsville Police Department and no reports were  
4 filed under John Webb.

5 **Q:** So, the defendant never filed a police report in  
6 Darlington County for medical documents that were missing?

7 **A:** No, not to my knowledge.

8 **Q:** Was there another family home?

9 **A:** There was in Conway.

10 **Q:** And that's in Horry County?

11 **A:** That's correct.

12 **Q:** Did you ever check the Horry County data base or with law  
13 enforcement agencies to see if the defendant ever filed a  
14 police report there for any missing valid medical documents?

15 **A:** I did. I checked with Conway Police Department and Horry  
16 County Police Department and there were no documents, or  
17 excuse me, there was no record of a police report being filed  
18 for missing documents or anything pertaining to John Webb.

19 **Q:** You previously testified to Kristie Shaw being the  
20 defendant's ex-wife at this time.

21 **A:** Uh-huh. (Affirmative response).

22 **Q:** During the course of your investigation did you review for  
23 example the final divorce order of Horry County Family Court  
24 to see if the defendant ever alleged missing documents?

25 **A:** I did. There were no references in the final order to

1 show the documents were missing.

2 **Q:** So, the defendant never alleged that his wife had some  
3 documents that he needed?

4 **A:** No, sir.

5 **Q:** How long after the February 14<sup>th</sup> meeting when you first met  
6 him and his attorney and went to his house, how long after  
7 that was it until you arrested the defendant?

8 **A:** I met with he and his attorney on February 14<sup>th</sup>. I  
9 contacted his attorney on -- let me look. I contacted his  
10 attorney on March 7<sup>th</sup> to inform him that I'd obtained warrants  
11 for Mr. Webb's arrest. And then it wasn't until we arranged a  
12 meeting and he and his attorney met with me at the detention  
13 center on March 10<sup>th</sup>. So, until his arrest -- February 14<sup>th</sup>  
14 through March 10<sup>th</sup> so approximately a month.

15 **Q:** Almost one month.

16 **A:** Almost one month, yes, sir.

17 **Q:** Is there a reason you waited so long?

18 **A:** Out of courtesy. He did say that he had documentation.  
19 Things do happen, I completely understand that. However, I  
20 provided him ample time to, as I think you heard in the  
21 recording, alternate documentation as Mr. Humphries referred  
22 to is as. I gave him ample time to provide alternate  
23 documentation and not only was I not provided any  
24 documentation; I was not contacted at all. So, on March 7<sup>th</sup> I  
25 went forward with obtaining warrants.

1 Q: Since March 10<sup>th</sup>, 2017 have you ever received or found any  
2 record of this documentation as required by law?

3 A: I have not.

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

5 BY MR. MARTIN:

6 Q: Investigator Strickland, I don't have any more questions  
7 right now. Answer whatever Mr. Humphries may have, please.

8 A: Okay. Thank you.

9 CROSS EXAMINATION OF INVESTIGATOR STRICKLAND BY MR. HUMPHRIES:

10 Q: Good afternoon, Inspector.

11 MR. HUMPHRIES: With the Court's permission.

12 THE COURT: You may proceed.

13 MR. HUMPHRIES: Thank you.

14 BY MR. HUMPHRIES:

15 Q: Let's -- are you familiar with the types of hours that  
16 residents work generally?

17 A: Generally, yeah. It depends on, I'm sure, which group of  
18 -- what area they're in, but generally, yeah. It can vary.

19 Q: It's fair to say that residents typically work very long  
20 hours.

21 A: Correct.

22 Q: And so, if Doctor Webb was prescribing outside the  
23 practice, and we've talked about that, but if he was  
24 prescribing outside the practice it would not be unusual for  
25 those prescriptions to be called in after usual business

1 hours?

2 **A:** Correct, if he was actually prescribing outside, yeah.

3 **Q:** Okay. Let's go to, just very briefly, Alexandria Chavis.  
4 What's the dosage of that medication?

5 **A:** 0.25 milligrams.

6 **Q:** Okay, and are you -- in terms of strength of dosage, how  
7 would you qualify that?

8 **A:** So, that prescription, albeit 0.25 milligrams, it only  
9 comes in two strengths which is 0.25 and .5. So, it is  
10 strong. Yeah, even though it's a low dosage it's a highly  
11 potent drug.

12 **Q:** How many tabs?

13 **A:** 14 tablets.

14 **Q:** Okay. And how often would you -- if it were prescribed  
15 for sleep, how many times would you dose per day?

16 **A:** One at bedtime.

17 **Q:** Okay. We've all heard the statement so we're not going to  
18 rehash that to any great extent. But let's talk just a bit  
19 about this. Let's assume for the sake of our discussion that  
20 the records were made, they were in the possession of the wife  
21 in the family home from which he had been expelled, and he did  
22 not have access for whatever reason. The attorney wouldn't  
23 him have them, wife wouldn't let him have them. What would  
24 have then been his recourse to produce the records or to  
25 produce a record if those records were unavailable to him?

1 What would a practitioner have to do in order to comply with  
2 this particular statute?

3 **A:** He would have to have produced some sort of record. Some  
4 sort of record that could have been verified.

5 **Q:** Okay. And so just to be clear, if as in this case for our  
6 point of discussion -- I understand they may take some issue  
7 with the way I've set it up but, at that point if they are  
8 unavailable by virtue of some family court order or whatever.  
9 If he can't show you something, then he's in violation of this  
10 statute?

11 **A:** By law, yes.

12 **Q:** House burns down, be in violation of this law.

13 **A:** Technically speaking.

14 **Q:** House gets flooded, he's in violation of the law.

15 **A:** However, I think we discussed alternate methods.

16 **Q:** And that's exactly what I wanted to get to. Would he have  
17 been permitted at that time, upon being notified or being  
18 requested to produce these records, would he have been  
19 permitted to recreate the records under HIPPA guidelines in  
20 order to comply with the statute?

21 **A:** He is not allowed to recreate records.

22 **Q:** Okay. Would it be good practice, separate and apart from  
23 requirements of the Bureau of Drug Control, to recreate the  
24 record and notify the patient that the records were lost,  
25 missing, or otherwise and give them the opportunity to review

1 those recreated records to make any amendments?

2 **A:** Sorry.

3 **Q:** Okay. Alright, let's do it this way. You know sometimes  
4 I do -- alright, records are missing, so there is a void in a  
5 patient record. Would it be most appropriate under HIPPA  
6 guidelines to first notify the patient that there exists that  
7 gap due to missing records.

8 **A:** I'm no expert on HIPPA.

9 **Q:** Okay, so if you don't know ---

10 **A:** Okay, sorry I don't know.

11 **Q:** Right. So, but just to be clear, in order to comply with  
12 this statute if Doctor Webb sent a letter to each of the  
13 patients indicating that the records were lost or destroyed,  
14 and then sent a recreated record with their opportunity to  
15 review it for any amendments; that in and of itself per the  
16 Bureau of Drug Control would not rectify the situation?

17 **A:** If I would have been provided that as I'm a reasonable  
18 investigator, I would have taken that into consideration.

19 **Q:** Okay. And what would have been the timeframe for that?

20 **A:** A reasonable timeframe.

21 **Q:** Okay. And just to be clear, at the point of which -- and  
22 we were all there, it was in my office.

23 **A:** Right.

24 **Q:** We've had those meetings before. At that time when you  
25 were talking with Doctor Webb about going to Hartsville.

1 **A:** Uh-huh. (Affirmative response).

2 **Q:** At that time you cautioned him about creating the record.

3 **A:** Correct.

4 **Q:** Okay. And told him that you would not give him an  
5 opportunity to do that.

6 **A:** Correct.

7 **Q:** Okay. Alright. And if he has now sent such a letter and  
8 such a recreated record to the three individuals contained in  
9 these indictments, it is your position that that does not --  
10 even if he has done that, that does not cure his situation  
11 here?

12 **MR. MARTIN:** Objection, Your Honor. I think we're asking  
13 something that's not in evidence or even been spoken about.

14 **THE COURT:** Restate your question.

15 **MR. HUMPHRIES:** I will because I have to lay a  
16 foundation.

17 **BY MR. HUMPHRIES:**

18 **Q:** If Doctor Webb ha, since your meeting with him, sent  
19 letters pursuant to HIPPA indicating that the records are lost  
20 and they've been recreated along with a recreated record  
21 inviting them to view it, amend it. If he has done that is it  
22 still the position of your Drug Control that he is not in  
23 compliance with this statute?

24 **A:** I can't speculate to that. However, the records do have  
25 to be readily retrievable, which is defined as usually one

1 hour or less. So, I would say that does not meet.

2 **Q:** Alright. Okay.

3 **MR. HUMPHRIES:** I beg the Court's indulgence just one  
4 moment.

5 **THE COURT:** Certainly.

6 **BY MR. HUMPHRIES:**

7 **Q:** Thank you, Inspector.

8 **A:** Yes, sir.

9 **THE COURT:** Reexamine.

10 **MR. MARTIN:** Thank you, Your Honor.

11 **REDIRECT EXAMINATION OF INVESTIGATOR STRICKLAND BY MR. MARTIN:**

12 **Q:** A couple things.

13 **A:** Yes, sir.

14 **Q:** Per your investigation did you ever find a report or  
15 evidence of the house in Darlington burning down?

16 **A:** No.

17 **Q:** Was there ever any evidence of the home in Conway catching  
18 fire?

19 **A:** No.

20 **Q:** How about a flood in Darlington?

21 **A:** No, not to my knowledge.

22 **Q:** What about the flood we recently had here in Conway? Did  
23 that affect that home?

24 **A:** That would have been before the time frame -- or after the  
25 time frame, excuse me.



1 **Q:** We heard a question about letters. From the time that the  
2 defendant, you met with him on February 14<sup>th</sup> until today, did  
3 you receive any letter of any kind to anyone?

4 **A:** I have received no documentation of such.

5 **Q:** You mentioned the term readily available; correct?

6 **A:** Readily retrievable.

7 **Q:** Retrievable. Thank you. Is it true that you said one  
8 hour or less?

9 **A:** Correct.

10 **Q:** But you gave him a month?

11 **A:** Correct.

12 **Q:** And during that period of time did he provide you with  
13 anything?

14 **A:** Nothing.

15 **Q:** Did you find anything?

16 **A:** Found nothing.

17 **Q:** So, from 2016 when the scripts were written until today's  
18 date?

19 **A:** Nothing.

20 **MR. MARTIN:** Court's indulgence.

21 No further questions.

22 **THE COURT:** Recross.

23 **MR. HUMPHRIES:** No, sir. Thank you.

24 **THE COURT:** You may step down.

25 **INVESTIGATOR STRICKLAND:** Yes, sir.

1           **THE COURT:** You may call your next witness.

2           **MR. MARTIN:** At this time, Your Honor, the State rests  
3 with regards to its case in chief.

4           **THE COURT:** Ladies and gentlemen of the jury, I need to  
5 take up some matters with the attorneys so I'm going to ask  
6 you to retire to the jury room for a few minutes. Again, do  
7 not undertake discussion of the case among yourselves. Thank  
8 you very much.

9                                   **(JURY RETIRES TO JURY ROOM AT 2:42PM)**

10          **THE COURT:** Alright, anything further from the State?

11          **MR. MARTIN:** Nothing at this time.

12          **THE COURT:** Anything from the defense?

13          **MR. HUMPHRIES:** At this time the defendant would move for  
14 a directed verdict referring back to the statute as written.  
15 He is charged with this statute, that it is unlawful for a  
16 person to knowingly or intentionally furnish false or  
17 fraudulent material or information in or omit any material  
18 information from any application, report or other document  
19 required to be kept or filed with this article or any record  
20 required to be kept by this article. It craves references to  
21 44-53-340 of the same article, which requires persons  
22 registered to manufacture, distribute or dispense controlled  
23 substances under this article shall keep records and maintain  
24 inventories in conformance with the record keeping and  
25 inventory requirements of Federal law and with any additional

1 rules the department issues. The testimony in this case thus  
2 far references no statute under this article which identifies  
3 any particular record or any particular record keeping  
4 maintenance. The testimony is void of that as it relates to a  
5 statute, it's required under 44-53-390. The record is also  
6 void of any reference, direct reference to any DHEC regulation  
7 that discusses what records are to be maintained or what  
8 record keeping mechanism must be used in relation to the  
9 prescribing of medications. There is no testimony in this  
10 record that specifically relates to a statute under article 3.  
11 There is no testimony in this record specifically relating to  
12 a DHEC regulation. I will tell the Court there is a DHEC  
13 regulation, it's 602. It exists. But there's been no  
14 testimony as to regulation 6002, none. What we have heard is  
15 testimony about what maybe required in a residence program.  
16 We have heard testimony about what maybe required in terms of  
17 licensing by LLR and the Board of Medical Examiners. We've  
18 heard testimony from the Inspector about what the Bureau of  
19 Drug Control requires. But we have zero testimony that  
20 directly points to any statute that identifies the records or  
21 the record keeping mechanism that's within the article,  
22 article 3. Nor has there been any testimony regarding any  
23 DHEC regulation regarding what records are to be kept and what  
24 record keeping mechanism must be used. There is no testimony  
25 in this record related to that. And the charge for which he

1 was indicted, 44-53-390 and 44-53-340 requires as a part of  
2 the proof a material term of this statute and of this crime is  
3 to identify that a record was to be kept and what record  
4 keeping mechanism must be used. And this record is void, void  
5 of any direct reference to any other applicable statute  
6 related to that for any DHEC regulation directly applicable to  
7 that issue. For that reason, I move for a directed verdict of  
8 not guilty.

9 **THE COURT:** Alright. What does the State say?

10 **MR. OSKIN:** Thank you, Your Honor. With regards to that  
11 specific objection by Mr. Humphries, although that regulation  
12 might not have been specifically quoted to his liking, it was  
13 testified to by Investigator Strickland with regards to what  
14 registered practitioners are supposed to do, what they're  
15 required to do with keeping the records. That goes directly  
16 to the matter of the statute itself, Your Honor, where the  
17 State is of the position that this defendant failed to produce  
18 and then omitted any material information from those records,  
19 that goes hand in hand with Investigator Strickland's  
20 testimony of what was required. Additionally to that, Your  
21 Honor will recall my questions to Pharmacist Kate Birringer  
22 where she also elaborated that she also had to keep a record  
23 as a practitioner and that she would hope that a doctor would  
24 as well, insinuating that that's what a practitioner is  
25 supposed to do. That is directly from regulation 602(b) with

1 DHEC, Your Honor. So, although not directly quoted in  
2 testimony it was referenced from the witness stand. In  
3 addition to that, Your Honor, the testimony from the witnesses  
4 in this case all go to prove and provide to the trier of fact  
5 that this defendant failed to keep records. In fact, it's  
6 pretty much admitted to by defense counsel and the defendant  
7 throughout. It's just what happened to it afterwards. And  
8 that's the issue for the jury. But as far as meeting the  
9 burden statutorily and citing 602 regulation, Your Honor, it's  
10 the State's position that that was covered by Investigator  
11 Strickland and Kate Birringer.

12 **THE COURT:** Is that your response?

13 **MR. OSKIN:** Yes, Your Honor.

14 **THE COURT:** Any reply?

15 **MR. HUMPHRIES:** The statute's clear.

16 **THE COURT:** Well, when you say it's clear, now as I  
17 understand it the issue is under Section 44-53-390(4); is that  
18 right? Subsection 4?

19 **MR. HUMPHRIES:** (A) (4), Your Honor.

20 **THE COURT:** Yeah, (a) (4), excuse me. But it is that  
21 particular provision that provides it is unlawful for a person  
22 knowingly or intentionally to furnish false or fraudulent  
23 material, information and or omit any material information  
24 from any application, report or other document required to be  
25 filed under this article or any record required to be kept by

1 this article. And your position is that, of course, no  
2 regulation, particular regulation or statute has been referred  
3 to; is that right?

4 **MR. HUMPHRIES:** Yes, sir. And just for completeness of  
5 the record, there's also a reference in 340 to record keeping  
6 and inventory requirements of Federal law. There is zero  
7 testimony that even closely bares on any Federal law  
8 requirements.

9 **THE COURT:** Is that correct as well as the State's  
10 concerned? Mr. Oskin?

11 **MR. OSKIN:** Court's indulgence, Your Honor.

12 **THE COURT:** Certainly.

13 I mean, just for that one point. I mean, has any Federal  
14 statute or regulation been referred too?

15 **MR. OSKIN:** Your Honor, with regards to that objection by  
16 defense, we would submit Investigator Strickland's testimony  
17 that his role in DHEC is equivalent to the DEA, that's based  
18 off State regulations, based off Federal law. And that does  
19 bring it under that purview. And let's not get too far ---

20 **THE COURT:** I did not ask you what the purview is. I'm  
21 just asking has any Federal statute been referred too. It's  
22 your witness, I mean ---

23 **MR. OSKIN:** I understand and if I could answer it.

24 **THE COURT:** Well, I'm ask you. I'm not asking him. He's  
25 already testified twice.

1           **MR. OSKIN:** Citing his testimony then ---

2           **THE COURT:** And what was it?

3           **MR. OSKIN:** --- the State would submit that when  
4 Investigator Strickland referred to his job capacity as a DHEC  
5 agent, this his job is based off Federal law in the capacity  
6 of what he does investigating, and the likeness of a DEA agent  
7 which is based off Federal rules, regulations and statutes.  
8 All of the witness testimony, Your Honor, goes to 44-53-390,  
9 Section (a) to further prove that this defendant knowingly and  
10 intentionally omitted keeping the records. The reason we're  
11 here, the reason the case should survive past directed verdict  
12 and be submitted to a jury in its entirety.

13           **THE COURT:** Alright. Mr. Humphries, anything in  
14 rebuttal?

15           **MR. HUMPHRIES:** No, sir.

16           **THE COURT:** I think it's Rule 19 on a directed verdict  
17 motion, the Court's not concerned with the weight of the  
18 evidence but the failure to put any competent evidence tending  
19 to prove the charge in the indictment, of course I understand  
20 interpretation is required in testimony that they are  
21 operating under regulations under this article. I find that  
22 there is sufficient evidence to go forward tending to prove  
23 the allegations of the indictment. So, the directed verdict  
24 is denied.

25           **MR. HUMPHRIES:** Thank you, Your Honor.

1                   **MR. OSKIN:**   Thank you.

2           **THE COURT:** Of course, it can be reviewed at the closing  
3 of all the evidence. Now, talking about all of the evidence,  
4 where are we?

5           **MR. HUMPHRIES:** Yes, sir, if you'll give me five minutes  
6 with my client we'll come back with that answer.

7                   **THE COURT:**  Alright.  Okay.

8                   **MR. HUMPHRIES:** Thank you.

9           **THE COURT:** Alright. We'll stand at ease.

10 (RECESS)

11           **THE COURT:** Alright, are we ready to proceed from the  
12 State?

13       **MR. HUMPHRIES:** Yes, sir. Oh, I'm sorry, Judge.

14           **MR. OSKIN:** State's ready, Your Honor.

15                   **THE COURT:**   Defense?

16                   **MR. HUMPHRIES:** Yes, sir.

17       **THE COURT:** Alright. Anything further from the State?

18           **MR. MARTIN:** Nothing at this time, Your Honor.

19       **THE COURT:** Anything further from the defense?

20           **MR. HUMPHRIES:** No, sir. We'll rest on the record, but  
21 my client does not wish to testify.

22           **THE COURT:** Did you discuss his right to testify?

23       **MR. HUMPHRIES:** I have, Your Honor. Would you like to -

24 | -

25           **THE COURT:** I'll instruct him then as well.



1           Alright, if you would, please, sir. As I understand you  
2 are John Alexander Webb?

3           **DEFENDANT:** Yes, sir, Your Honor.

4           **THE COURT:** If you would, please raise your right hand.

5                           **JOHN ALEXANDER WEBB, HAVING BEEN FIRST**  
6 **DULY SWORN, TESTIFIED AS FOLLOWS:**

7           **THE COURT:** At this time, I am going to explain to you  
8 certain of your rights. If you do not understand anything I  
9 say, please let me know. If you want me to explain anything  
10 in more detail, please let me know. Do you understand this?

11           **DEFENDANT:** Yes, sir.

12           **THE COURT:** We have now reached that stage of trial where  
13 you may present your defense. You have the right to claim the  
14 protections given to you by the Fifth Amendment to the  
15 Constitution of the United States. This amendment states in  
16 part, no person shall be compelled in any criminal case to be  
17 a witness against himself. This means that you cannot be  
18 required to testify in this case, but you have the right to  
19 testify on your own behalf. However, no one can make you  
20 testify. This is a personal right, and no one can waive this  
21 right except you. If you decide to testify you will be  
22 subject to certain rules and the same rules that govern other  
23 witnesses and you may examined and cross examined on any  
24 relevant issue in this case. In addition, if you have any  
25 convictions involving dishonesty or false statement or for

1 crimes punishable by imprisonment for more than one year and  
2 this Court determines that the probative value of that  
3 evidence outweighs its prejudicial effect to you, the  
4 Solicitor will be able to introduce your record to attack your  
5 credibility. Now, if you decide to testify this decision on  
6 your part must be freely, voluntarily and intelligently made  
7 with the knowledge or the protections given to you five the  
8 Fifth Amendment and the consequences of your decision to  
9 testify. If you decide not to testify I will instruct the  
10 jurors that they cannot give the fact that you did not testify  
11 any consideration whatsoever and that there is to be  
12 absolutely no prejudice to you because you did not testify.  
13 You may talk with your attorney, your family and friends, or  
14 anyone else but the final decision will be left entirely up to  
15 you. Now, do you understand what I have explained to you?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** Do you have any questions about what I have  
18 explained to you?

19 **DEFENDANT:** No, sir.

20 **THE COURT:** Have you discussed with your lawyer whether  
21 you should testify or not?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** Do you wish to talk to your lawyer anymore at  
24 this time?

25 **DEFENDANT:** No, sir.

1           **THE COURT:** Do you wish to testify in this case?

2           **DEFENDANT:** No, sir.

3           **THE COURT:** Very well. You may be seated. Thank you,  
4 sir.

5           Alright. It's 3:00 what do y'all want to do?

6           **MR. MARTIN:** Your Honor, if Your Honor wishes to do  
7 closings this afternoon, we would ask for a brief recess to  
8 prepare.

9           **THE COURT:** How long?

10          **MR. MARTIN:** 30 minutes at the most, Judge. 15 -30.

11          **THE COURT:** 15 minutes maybe.

12          Alright, see that the jury has refreshments and we'll be  
13 about 15 minutes. Let's look at maybe a quarter after, that's  
14 10 minutes. If you need more time, fine.

15          Now, I've gotten I think one charge from the State and I  
16 think -- let's see where is it here. Have you seen that?

17          **MR. HUMPHRIES:** I have, and I don't object to it. I  
18 don't mind using that one as opposed to the one I submitted.

19          **THE COURT:** Alright, where is yours?

20          **MR. HUMPHRIES:** It's probably back in chambers, Judge,  
21 where I gave it to you, but I have another copy of it.

22          **THE COURT:** Alright, if you have another. I think y'all  
23 know by now I do not have any staff and I'm not well organized  
24 to begin with.

25          **MR. HUMPHRIES:** The State has a copy of this. That

1 essentially covers the same subject matter.

2       **THE COURT:** Alright, for the purposes of the two charges.  
3 I will probably -- well, I will, I'll say this -- I'll charge  
4 the first given by the State which is the violation of the  
5 drug distribution law and then I will also charge the request  
6 for the defendant as an explanation.

7       **MR. MARTIN:** Judge, I think that's probably the fairest  
8 way to do it. This might be the only thing we've agreed on.

9       **THE COURT:** Oh gracious, y'all have done well. Y'all  
10 have been the most cooperative people. I think y'all must be  
11 living in the same neighborhood or something. I don't know.

12       Alright, are there any other charges? Well, let me just  
13 go through the charges for your time and might give them a  
14 little bit more time now. Alright, I'm going to testify (sic)  
15 about the right of the defendant not to testify cannot be  
16 considered. Then I will charge them -- we don't have any  
17 expert witnesses. I don't think anybody was qualified.

18 Presumption of innocence, reasonable doubt. Now I give the  
19 reasonable doubt here we've been using, or at least I've been  
20 using, and it's still available, they have not overruled it  
21 yet, which is the simplest thing. You heard it in my opening  
22 statement. A reasonable doubt is the kind of doubt that would  
23 cause a reasonable person to hesitate to act. Now, I will say  
24 if the jury comes back for an explanation then I will use  
25 State vs. Neves, which is Victor vs. Nebraska. Then direct

1 and circumstantial evidence, intent, and then the two  
2 statutes. Alright, that's what I propose doing. Take a few  
3 minutes to see if you have any suggestions or decide who --  
4 how do you want to do the arguments? I mean, are you going to  
5 have two arguers or - I have also another thing that I find  
6 that we're getting close to it. That is going back to the  
7 State versus Adaberry rule under the old rules before the  
8 rules were changed and then reinstated. That is that the  
9 State will open fully, law and facts. And the one reply and  
10 then you will obviously have closing.

11 **MR. OSKIN:** Yes, sir.

12 **THE COURT:** Alright, very good. And I'll take exception  
13 to that if you'd like because I want somebody -- Mr. Chief  
14 Justice Pliecones came pretty close to it I think in saying  
15 that should be the law again, but anyway they haven't stated  
16 it yet. I do find the State versus Adaberry is a better rule  
17 in criminal cases as in civil cases the party having the  
18 burden of proof should open fully and then the defendant makes  
19 his argument and then the closing would be limited to anything  
20 that he might have brought out in the argument of the  
21 defendant.

22 **MR. HUMPHRIES:** Yes, sir. Thank you.

23 **THE COURT:** Any exception will be welcome. Alright,  
24 y'all take just a minute or as long as you have because I've  
25 involved you.

1 (RECESS)

2 THE COURT: Alright, is the State ready to proceed?

3 MR. MARTIN: Yes, Your Honor.

4 THE COURT: Defense?

5 MR. HUMPHRIES: Yes, sir.

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

7 (JURY ENTERS COURTROOM AT 3:29PM)

8 THE COURT: Alright, let the record reflect that the jury  
9 and the alternate are in the jury box. Madam forelady, ladies  
10 and gentlemen of the jury, I'll now recognize the defense.

11 MR. HUMPHRIES: Your Honor, at this time the defense  
12 rests. And we would renew our motion for directed verdict, we  
13 understand the Court's ruling.

14 THE COURT: Very good.

15 Madam forelady, ladies and gentlemen of the jury, the law  
16 does not compel a defendant in a criminal trial to take the  
17 witness stand and testify. And no presumption of guilty may  
18 be raised or no inference of any kind may be drawn from the  
19 defendant's decision not to testify. The law never imposes  
20 upon a defendant in a criminal case the burden or duty of  
21 calling any witnesses or producing any evidence or testifying.  
22 Therefore, the decision of the defendant not to take the stand  
23 and call a witness to testify on his behalf cannot be taken,  
24 held, discussed or even considered against the defendant in  
25 any manner.

1           Madam forelady, ladies and gentlemen of the jury, you  
2 have been selected as fair and impartial jurors, sworn to  
3 impartially try and determine the facts of this case. And  
4 when you comply with your oath to do so then no one will have  
5 a right to criticize your verdict and you will have fully  
6 discharged your duty as jurors. We will now have the closing  
7 arguments by the State and then the defense and then the State  
8 will have final reply. Very well.

9           I recognize the State for their closing argument.

10           **MR. MARTIN:** And may it please the Court, Your Honor?

11           If you can't produce them, it doesn't exist. If you  
12 can't produce them, it doesn't exist. That's not my words.  
13 That's not Mr. Oskin's words. That was the defense's words in  
14 the statement, the recording you heard. You heard the  
15 defendant acknowledge that, he said I've got that. You heard  
16 it. Let's don't complicate this more than what it is. Mr.  
17 Oskin said, rules are rules. We all have to follow them  
18 everyday of our lives. We've reached the point now as the  
19 Judge has instructed you that we're in closing arguments. The  
20 Judge is the one that's going to instruct you on the law.  
21 He'll do that once we conclude. But it's kind of a pickled  
22 situation because I can't talk with you about the case without  
23 also addressing the law, so I'm going to do that. But  
24 understand, ultimately what the Judge says is the law, that's  
25 the law. But let's look at what Mr. Humphries addressed with

1 you guys in openings on the indictment itself. You as jurors  
2 have to believe beyond a reasonable doubt that the defendant  
3 is guilty. What's a reasonable doubt, right? Reasonable  
4 doubt is being firmly convinced. It's not proof beyond any  
5 possible doubt that exists. Very few things in life are  
6 certain. The sun's going to come up tomorrow, it's hopefully  
7 going to set. Those things are pretty certain, but very few  
8 things in life other than that are certain. But you must be  
9 firmly convinced that the evidence that you've seen shows the  
10 defendant is guilty. But what makes him guilty? According to  
11 Investigator Strickland's testimony and the other evidence  
12 you've heard, any practitioner any person with the authority  
13 to prescribe, whether it be a limited or full license bust  
14 knowingly and intentionally keep records. Don't get bogged  
15 down by the fraudulent part of it, the furnishing false or  
16 fraudulent information. As Mr. Humphries said, we're not  
17 focused on that. We're focused on the part where it is  
18 omitting any material information from any application, report  
19 or other document required to be kept or filed under this  
20 article or any record required to be kept. If you can't  
21 produce it, it doesn't exist. Let's take a step back and  
22 let's think about what we've heard from that witness stand  
23 because that's the evidence and the Judge is going to tell you  
24 that's the only evidence you can consider, what you heard from  
25 that stand. So, who did we hear from first? Sheridan Spoon.



1 He talked with you about what's the importance of a limited  
2 license versus a full license and what does that mean. The  
3 defendant here had a limited license. He talked with you  
4 about having a limited license under the residency program and  
5 with a limited license there are certain guidelines in place  
6 and restrictions. And Doctor Collier, Victor Collier, backed  
7 him up on that. The residency program at Grand Strand Medical  
8 Center and the Patient Clinic require you to keep a record,  
9 full license and limited license. It also you requires you  
10 not to moonlight. Now, moonlighting and we've addressed this,  
11 that is not criminal in and of itself, no. But it once again  
12 shows another rule that this defendant broke. Had he have  
13 practiced within the scope of his residency program, you heard  
14 from Connie Williams, you heard from Billy Davis, they would  
15 have a record of it. And if he'd have been doing what he was  
16 supposed to do in the first place, there'd be a record. But  
17 there's not. If you don't have it, it didn't exist. Now, we  
18 heard from, in addition to Ms. Williams, we heard from three  
19 other pharmacists and they verified, and Mr. Humphries already  
20 said they're not disputing this, but they verified that the  
21 defendant did himself issue these prescriptions, and whom they  
22 issued them to, and the dates that they were filled. But did  
23 you catch the part about where they were talking about, I  
24 believe it was Ms. Birringer and even Ms. Proctor to a certain  
25 extent, how unusual this whole thing was. And then

1 Investigator Strickland who is also a pharmacist mind you --  
2 let me back up. We know the times, right? Two of the  
3 prescriptions were for Phentermine, in essence a diet pill.  
4 But it's still a controlled substance. The times that they  
5 were called in, highly unusual. You heard testimony that,  
6 yes, we keep referring to it as a diet pill. And I'm not  
7 trying to fool you or make it sound like this is heroine or  
8 some other opioid, but it's still a heavily abused drug. You  
9 heard testimony the pharmacist about that, including  
10 Investigator Strickland. And the other Schedule IV drug, that  
11 can often be used to help one sleep. It's still highly abused  
12 and it's a controlled substance. The law requires that we  
13 keep a record of these controlled substances. And I think  
14 more importantly we segue -- pardon me a second, my mouth's a  
15 little dry -- to Investigator Strickland's testimony because  
16 he's important. He ties all of this together. Not only is he  
17 a pharmacist, but he's an investigator with DHEC, so you know,  
18 these things do overlay. And he talks with you about the  
19 importance. Why does it matter, right? Why should you care?  
20 There's a reason, whether we agree with it or not, there's  
21 always a reason laws are put in place. And the reason here is  
22 to protect the patient. His words, not mine. To protect the  
23 patient. What happens when the next doctor, or physician, or  
24 practitioner or whatever treats a patient and there's no  
25 record of what's been reported before them. You heard Mr.

1 Spoon allude to that and Investigator Strickland. It not only  
2 helps the current doctor cover his behind, but it helps future  
3 practitioners better treat that patient. And you've heard  
4 from Ms. Birringer, it protects the pharmacist too so that  
5 they can avoid pharmacy shopping and all of these other  
6 things. So, let's don't get away from the bigger picture  
7 here. You've got to have documentation. Now, did he  
8 knowingly or intentionally omit this information? That is an  
9 issue you've got to figure out. Well, you heard testimony  
10 from Doctor Collier and Mr. Spoon that in the residency  
11 program training does exist to notify them of what they're  
12 supposed to do. You heard in the statement you're required to  
13 know the law. You heard from Investigator Strickland that  
14 when they went to the defendant's house in Hartsville, house  
15 number one mind you, he had documentation from his training.  
16 He knew. And think for a second, why would someone practicing  
17 outside of the scope of their residency program want to keep  
18 records in the first place, documentation of something to get  
19 them in trouble. I submit to you that the record never  
20 existed in the first place. Not only did he fail to keep it  
21 and make it readily retrievable, but I submit to you that it  
22 never even existed. We've heard some talk about the divorce,  
23 I believe the term ex-wife was used, and questions asked about  
24 what could possibly happen with that. Investigator Strickland  
25 did his homework. He checked house number one in Darlington

1 County, no police report ever filed for any missing medical  
2 documentation. For a doctor whose license is on the line and  
3 is facing criminal punishment if something was stolen it  
4 should be reported. He checked house number two in Horry  
5 County. Once again, no police report ever filed. Well, maybe  
6 the wife, the ex-wife, is responsible. Well, surely you would  
7 allege that somewhere in the final divorce order; but you  
8 heard testimony, he didn't. What about a flood? No evidence  
9 of a flood to the house. No evidence of a fire. And you  
10 heard Investigator Strickland's own words, typically in a  
11 practice you need it in about a couple hours, you've got to  
12 keep the records to two years. Y'all, he gave him almost a  
13 month to turn this over and if you count the date of arrest on  
14 March 10<sup>th</sup>, 2017, we're two years later. Still nothing. You  
15 heard him question about letters. Have you seen letters? If  
16 we don't have it, it doesn't exist.

17 Court's indulgence one moment.

18 Now, let's talk a little bit about the drug's themselves.  
19 They are controlled substances and all controlled substances  
20 are required to be documented. And you've heard Investigator  
21 Strickland's statements on each drug's potential for abuse.  
22 Once again, we're not trying to sell you that this is, like I  
23 said heroine, an opioid, crack, meth; but it is a drug that is  
24 deemed very, very likely for potential abuse. And it is  
25 abused, you heard testimony that it's quite often abused.

1 This whole thing is kind of funny how when you go through  
2 these proceedings, you go back to when you were much younger  
3 and, you know, it kind of reminds me -- I'm from here, I grew  
4 up in the area. And when I was in school, we had this one  
5 kid, great friend of mine, ended up being one of the first  
6 ones to get married and have a family, completely unexpected.  
7 He would not have been the one that you would have expected to  
8 do that. Every morning for biology class you could count on  
9 him to not have his homework. I'm telling you, every morning.  
10 It was a joke. And one day in class, I'm not kidding when I  
11 say this, one day in class the teacher asked him, well Mr.  
12 Dunn where's your homework? My dog ate it. He didn't have  
13 it, therefore it didn't exist and he got a zero. This is  
14 essentially the essentially my dog ate my homework defense.  
15 You are a professional who is held to a much higher standard  
16 in your area. You have great responsibilities, tremendous  
17 responsibilities that come with that license that you hold,  
18 whether it's limited or full, whether you are a resident or  
19 you're full time. You're held to a high standard and if you  
20 practice the way you're supposed to be practicing, safeguards  
21 are in place to protect yourself. I guess the dog ate his  
22 homework and he doesn't have it. Ladies and gentlemen, you're  
23 going to go back here shortly once you hear from Mr. Humphries  
24 and you're going to deliberate and you're going to reach a  
25 decision. And ultimately it boils down to this and I've

1 already admitted to it, do you care? Investigator Strickland,  
2 our witnesses have laid out why you should care. Do you care  
3 and if you do then you'll find the defendant guilty.

4 **THE COURT:** Mr. Humphries.

5 **MR. HUMPHRIES:** May it please the Court?

6 So, let me tell you a story. Here's this doctor, he was  
7 going through a bad divorce. It was contentious. He got  
8 kicked out of the house, he got some of his things. He got  
9 some of his things delivered to him. He got one paper bag  
10 full of papers out of an entire office, handed to him by his  
11 wife's lawyer. Sometime shortly thereafter he was contacted  
12 by his lawyer, said hey a Bureau of Drug Control agent wants  
13 to talk with you. Sure, I'll be glad too, anything I can do  
14 to help. Anything I can do to cooperate, and he does. And  
15 he's asked, well where would these patient records be for your  
16 wife, your stepdaughter, and your wife's paralegal, where  
17 would they be? Listen, I got kicked out of the house. I'm  
18 living in another house now, they maybe at my house in  
19 Hartsville. They're probably in my house at Conway but I  
20 can't get them. But I did them, I did them. And by the way,  
21 if you ask my wife, my stepdaughter, her co-worker, did I take  
22 your blood pressure, did I listen to your complaints, did I  
23 take your history, did I document that before I prescribed; go  
24 ask them, they'll tell you. I'm telling you if you go ask  
25 them, they'll tell you I did it. And the agent says, well I

1 tell you what brother, have you got them or not, and if you  
2 don't have them, you're technically in violation of this  
3 statute. Now, if I told you that story what would you think?  
4 What would you think? Let's keep in mind who we're talking  
5 about too. For all intents and purposes Doctor Webb was still  
6 a student. Yeah, he graduated from med school, but he was in  
7 a residency program, essentially a paid student. He worked  
8 horrific hours because that's what happens if you're a  
9 resident. It's just part of your right of passage. But from  
10 the very first moment he was asked, really not knowing how  
11 important it was at the time. When you think about that, not  
12 knowing how important it was, he still said from the first to  
13 the last, I'm telling you man to man I did those records.  
14 They told me to do that in the residence program. They told  
15 me to document it and I did. I'm going through a divorce; I  
16 can't even go to the house. I've sent a list of things; they  
17 won't give them to me. If you can't produce them, you're  
18 technically in violation of this statute. A technicality.  
19 So, do you think that anybody from the State ever asked the  
20 wife, the stepdaughter, the coworker, when John prescribed you  
21 these meds did he create a practitioner/patient relationship  
22 with you? Did he document it? Did he check you out? Do you  
23 think they even asked? Understand this, the defendant has  
24 absolutely no burden in this case. None whatsoever. He's got  
25 a lot to lose. He's got a lot to lose. A fellow who's gone

1 through three years of med school and one year of residency,  
2 he's got a lot to lose. But he doesn't have the burden in the  
3 case. I submit to you this, they never asked. They never  
4 asked. They never asked the wife, the stepdaughter, the co-  
5 worker. They never asked because if they had and the answer  
6 was no he never created a history, he never asked, he never  
7 documented, he just called it in. I submit to you if that  
8 were the case you'd have heard from them. They never asked.  
9 In his testimony, Inspector Strickland never said he would  
10 ask, but if you remember in the statement he suggested that  
11 that might be the next step but he was giving my client first  
12 chance. It's a technicality. You're technically guilty when  
13 you can't produce those records. Now, keep in mind the doctor  
14 who was the supervising doctor or director of the program said  
15 that John was in good standing. He had successfully completed  
16 his first year, but he was a student. So, let's talk a bit  
17 about relationships, alright. So, there's a lot of talk about  
18 forming this bonafide relationship between practitioner or  
19 physician and patient, alright. Do you know that in our world  
20 today that you can go on the internet and fill out a couple of  
21 surveys and have medicine delivered to your door and you never  
22 speak to a living soul? Did you know that? Watch the  
23 commercials. And to suggest, to suggest that that is somehow  
24 better than a relationship which is clearly formed with a  
25 wife, a stepdaughter and a wife's co-worker is somehow



1 inferior to that. These things that John should have known  
2 about his patient in order to properly prescribe meds for  
3 them, he knew intrinsically because he did have a  
4 relationship, a real face to face, time spent, quality  
5 relationship with these people. Is that just inferior or is  
6 that just a technicality? There's been some talk about  
7 moonlighting, how that's not admitted in the residency  
8 program. So, I asked the doctor, the director, what's  
9 moonlighting? Is that employment somewhere else, in another  
10 facility? Yep. That's what it is. Well, folks that ain't  
11 what we got. He's not employed in some other facility where  
12 he saw his wife and his stepdaughter and his wife's co-worker.  
13 That ain't moonlighting. You heard in statements that this is  
14 exactly what the residency director at the time told him he  
15 could do. He's a student and so all of this talk about  
16 limited license versus full license versus -- let's say for  
17 arguments sake he made a mistake. That he prescribed outside  
18 of his license. He ain't charged with that folks. They're  
19 ain't an indictment about that here today. So, you know,  
20 there's talk about the meds and how they can be abused. We're  
21 talking about his wife, his stepdaughter, and her co-worker.  
22 Was there anything about these particular prescriptions that  
23 appeared to be abusive? No. No. There's talk about, well  
24 this med is used for procedures most often, but it also is a  
25 sleep aide, which they testified to. And folks, the other one

1 is a diet pill. So, you know, the suggestion that this is a  
2 dangerous practice ignores the relationship. It ignores the  
3 relationship, and nobody asked. Nobody asked. Alright so  
4 here's what we've got, we've got a guy three years of med  
5 school, going into his second year of residency, prescribes  
6 his wife, his stepdaughter, and a co-worker Schedule IV -- now  
7 I asked it's not a Schedule I, it's not a Schedule II, it's  
8 not a Schedule III. You know how these things work? One is  
9 the worst. One is the most abusive. Four is the least abused  
10 out of the schedule. These are all four. So, any suggestion  
11 that there's something sinister or abusive about this  
12 prescribing practice, that's not the truth. You can take  
13 anything and make it sound bad, but the truth of the matter is  
14 a couple of them wanted to lose weight, a couple of them  
15 needed help -- one of them needed help getting sleep. That's  
16 it. A technicality. So, you know, I asked you -- I asked you  
17 what would you think if you heard that story. Well, you heard  
18 it. You heard it. I don't know what a guys supposed to do,  
19 really. You know, one of the cardinal rules in closing  
20 arguments is you are not to personalize to the jury. You're  
21 not to ask the jurors specific questions that relates only to  
22 them. But, who doesn't in our community as a whole, know  
23 someone who's been through a contentious divorce? Who doesn't  
24 know how difficult that could be? How the simplest of things  
25 are fought over. Primarily because it's so emotional. So,

1 something as simple as calling up and saying, hey I really  
2 gotta get this stuff from my office, becomes you're not  
3 getting anything from me. Folks, that's life. Life  
4 intervenes, okay. We're not talking about murder. We're not  
5 talking about grand larceny. And by the way, filing a police  
6 report because you can't get your records back from your wife  
7 from whom you're separated with, who ain't happy with you;  
8 does that appeal to your common sense that you would run down  
9 to the police station and say she's got my medical records and  
10 she won't give them to me. Is that what you're thinking about  
11 when you're going through a divorce? It's a technicality. If  
12 they burnt up in a fire? Technically yeah, guilty. Washed  
13 away in a flood? Yeah, technically guilty. So, let's talk  
14 about technicalities because that's what we've been talking  
15 about. This entire case, quite frankly, is about  
16 technicalities. This statute, which by the way nobody asked  
17 the defendant, he how do you want to be charged. Have you got  
18 any particular preference on statutes? Is there something  
19 you'd like better than others? Nobody asked him that. An  
20 indictment is sought solely at the discretion of the State.  
21 That's their constitutional authority, it's their  
22 constitutional duty. I know that because I was one for 24  
23 years. What they charged him with is a violation of the drug  
24 distribution law. That's sounds horrific in fairness. It  
25 sounds like he's slinging rock on the corner. What they said

1 is that -- and they've already admitted this isn't really  
2 applicable. He hasn't furnished false or fraudulent material  
3 or information, that's not it. When you call in a  
4 prescription it's got your name on it. And if that wasn't  
5 enough, it's got your phone number on it. And if that wasn't  
6 enough, it's got your DEA prescribing number on it. He's got  
7 DEA authority to prescribe drugs. All of that's there. So,  
8 when we talk about there's no record, there's no record,  
9 there's a record. That's a record of every pharmacy that  
10 these things were filled at. You've heard that testimony from  
11 the pharmacists, everyone, which they maintain by the way for  
12 10 years which is 8 years longer than they require according  
13 to the Bureau of Drug Control my client to maintain his. So,  
14 when we talk about absence of records -- what they've charged  
15 him with is omitting any material information related to these  
16 patients, wife, stepdaughter co-worker, from any application,  
17 report or other document required to be kept or filed under  
18 this article. So, just a quick word about articles. An  
19 article is sort of a subsetting within the statutes. So,  
20 you've got titles, that's the big one. You've got chapter's,  
21 that's the next category. Then you've got articles, okay.  
22 This statute happens to be in Article 3 of Title 44, Chapter  
23 53. Any application, report, or other document required to be  
24 kept or filed under this article, Article 3, or any record  
25 required to be kept by this article, Article 3. And then it

1 refers by reference, and this is a statute within Article 3.  
2 It's 44-53-340. And it says that persons registered to  
3 manufacture, distribute, or dispense controlled substances  
4 under this article shall keep records and maintain inventories  
5 in conformance with the record keeping and inventory  
6 requirement of Federal law or with any additional rules the  
7 department, DHEC, issues commonly called Department or DHEC  
8 regulations. So, let's talk technicalities, since that's what  
9 we're talking about. Did you hear any reference in any  
10 testimony from any witness regarding any Federal law related  
11 to the maintenance and keeping of records or a record keeping  
12 mechanism? Any reference whatsoever? No. Did you hear  
13 reference to any other statute within Article 3 or Title 44,  
14 Chapter 53 regarding record keeping requirements or a record  
15 keeping mechanism? Any testimony whatsoever? No. Did you  
16 hear reference to any DHEC regulation, they have numbers by  
17 the way, DHEC reg 60 -- did you ever hear any DHEC regulation  
18 come from this witness stand talking about requirements  
19 regarding record keeping or a record keeping mechanism? No.  
20 Now, what you hear was a lot of testimony about well you  
21 should do this, well you should do that, well if you're in the  
22 residency program we want you to do this. Technicality. This  
23 statute doesn't ask what the residency program says you should  
24 do. This statute doesn't ask what the Bureau of Drug Control  
25 things you should do. This statute says what our legislatures

1 say in Article 3, Title 44, Chapter 53 you should do, or what  
2 do DHEC regulations say you should do. And there is no  
3 reference, there is no direct reference in this testimony to  
4 any specific statute or any specific DHEC regulation.  
5 Technicality. So, let's circle back around. Did a  
6 relationship exist? Of course, it did. It's his wife, his  
7 stepdaughter and her co-worker. So, we really ain't talking  
8 about that, folks. We're not talking about that. Do the  
9 records -- did the records exist at one time? He said, go  
10 talk to them they will tell you. You recall that from the  
11 statement. That would have been pretty easy. Been pretty  
12 easy. You know, help a brother out, I can't get the records  
13 we're going through a divorce. I got kicked out of the house,  
14 go ask her though, she'll still tell you. She might be mad at  
15 me, but she'll still tell you. So, did the relationship  
16 exist? Absolutely, a relationship existed. What he is  
17 charged with is not being able to readily produce, upon  
18 request, these records. In a life that is as messy as this  
19 one is -- and if he failed to do that, he was technically in  
20 violation of the very statute he stands charged with and tried  
21 for today. And so I say, if we're talking about  
22 technicalities, good. If we want to rely on technicalities,  
23 fire burns up the records. Technicality. Flood washes them  
24 away. Technicality. Let's talk about technicalities under  
25 this charge, the one they choose, they selected, and they have

1 put my client on trial for. As a technicality did they refer  
2 to any statute within Article 3 or any DHEC regulation that  
3 tells him what he's responsible to do under this statute?  
4 Folks, this is serious beyond serious. You can only imagine  
5 the personal, the professional impact these charges have on a  
6 fellow that went through three years of med school and one  
7 year of residency. Think back to what you thought when I told  
8 you that story. What would you say? Thank you.

9 **MR. MARTIN:** Nothing, Your Honor.

10 **THE COURT:** Very well.

11 Ladies and gentlemen, now it comes to my duty to charge  
12 you, which will take maybe 20 minutes. Would you like to take  
13 a break at this time and come back or would you like to just  
14 continue on?

15 **FORELADY:** Your Honor, we'd like to continue.

16 **THE COURT:** Very well.

17 As jurors in this case you have certain functions and  
18 responsibilities which are entirely separate and distinct from  
19 those of mine as the trial Judge. I am prohibited by the  
20 Constitution of our State from charging you on the facts of  
21 this case and I'm also prohibited from discussing the facts of  
22 the case with you or in any way animating what my feelings, if  
23 any, are about the facts of this case; it is your duty and  
24 responsibility and yours alone to ask when all issues of fact  
25 are presented in the case. I will therefore charge you that

1 if during the course of the trial or during my charge you have  
2 been given or are left with an impression or feeling that I do  
3 have a personal feeling about the facts of this case I would  
4 specifically instruct you to disregard that feeling or  
5 impression for you are the sole judges of what the testimony  
6 was and not the argument of counsel. It is also your duty and  
7 yours alone to weigh the testimony and evidence in the case  
8 and to pass upon the credibility and believability of the  
9 witnesses. In this connection, you have the right to believe  
10 all that a witness tells you or disbelieve all that a witness  
11 tells you. You have the right to believe a part of what a  
12 witness tells you and to disbelieve a part of what a witness  
13 tells you. You have the right to take into consideration any  
14 bias, or prejudice, or interest you feel the witness might  
15 have in the case. I say this merely to emphasize that the  
16 weight you see fit to give to the evidence and the credibility  
17 of the witnesses as well as all issues of fact are for your  
18 sole determination. As judges of the facts you are the sole  
19 judges of the credibility, that is the believability of the  
20 witnesses who have testified in the case. In passing upon  
21 their credibility you may take into consideration many things  
22 such as the appearance and manor of the witness on the stand,  
23 sometimes referred to as the demeanor of the witness. Was the  
24 witness forthright or hesitant? Was the witness's testimony  
25 consistent or did it contain discrepancies? What was the



1 ability of the witness to know the fact of which he or she  
2 testified? Does the witness have a cause or a reason to be  
3 biased or prejudice in favor of the testimony he or she gave?  
4 Was the testimony of the witness corroborated or made stronger  
5 by other testimony in evidence or was it made weak or  
6 impeached by such other testimony in evidence? As jurors you  
7 have the right to believe a small portion of a witness's  
8 testimony and discard the larger or vise versa. You may  
9 believe all of a witness testimony or not. You may believe  
10 the testimony of a single witness against that of many  
11 witnesses or the other way around. Most certainly you do not  
12 determine the fact of the credibility or believability by  
13 counting up the number of witnesses who may have testified.  
14 Now, I instruct you and emphasize the fact that the defendant  
15 did not testify is not a factor to be considered by you in any  
16 way in your deliberation and your consideration of the  
17 question of the guilt or innocence of the defendant. It must  
18 not be considered by you in any manner whatsoever. The  
19 defendant has a constitutional right to remain silent and the  
20 assertion of this right must not be considered by you in your  
21 deliberations. I repeat, under your oath you are to draw no  
22 conclusion whatsoever from the fact that the defendant in this  
23 case did not testify. The fact that this defendant did not  
24 testify should not even be discussed in the jury room. The  
25 burden of proof as I stated to you is on the State. The

1 defendant is not required to prove his innocence. The burden  
2 of proof remains on the State to prove guilt beyond a  
3 reasonable doubt. Now, by the same constitution in law which  
4 makes you the finders of fact and the evidence as I have  
5 discussed with you, I am as a Judge the sole and only  
6 instructor on the law. You must accept it's correct the law  
7 in which I charge it and apply to it the evidence as you find  
8 it and reach a verdict. If I should make an error in the law  
9 as I instruct it to you, there's another time and place that  
10 that error can be considered and if necessary corrected. But  
11 for the purpose of this case today, you must accept the law as  
12 I charge it to you to be the correct law. And finally, I  
13 charge you in this regard that you nor, for that matter, I  
14 should be concerned with what the law ought to be but rather  
15 what I charge the law to be. Now, the defendant is charged  
16 with violating the drug distribution law. The State must  
17 prove beyond a reasonable doubt that the defendant knowingly  
18 or intelligently obtained a prescription for himself or for  
19 another by furnishing false or fraudulent material in or  
20 omitting any material information from any application,  
21 report, or other document required to be kept or filed under  
22 this article or any record required to be kept by this  
23 article. Now, I have to instruct you that Triazolam and  
24 Phentermine are controlled substances under the laws of our  
25 State. Knowingly means with knowledge that is consciously

1 done. Intentionally means willfully intending the result  
2 which actually occurs, not accidentally or involuntarily.  
3 Now, the defendant -- excuse me, the statute itself speaks to  
4 this and it is unlawful for a person to knowingly or  
5 intelligently -- excuse me, knowingly or intentionally to  
6 furnish false or fraudulent material, information in, or omit  
7 any material information from any applicant, report, or other  
8 document required to be kept or filed under this article or  
9 any record required to be kept by this article. Persons  
10 registered to manufacture, distribute or dispense controlled  
11 substances under this article shall keep records and maintain  
12 inventories in conformance with the record keeping and  
13 inventory requirements of Federal law and with any additional  
14 regulations by Department of Health and Environmental Control.  
15 Now, the defendant has plead not guilty to this indictment and  
16 that plea puts the burden on the State to prove the defendant  
17 guilty. A person charged with committing a criminal offense  
18 in South Carolina is never required to prove himself innocent.  
19 I charge you that it is an important rule of the law that the  
20 defendant in a criminal case, no matter what the seriousness  
21 of the charge may be, will always be considered innocent of  
22 the crime for which the indictment was issued unless guilty  
23 has been proven by evidence satisfying you of that guilt  
24 beyond a reasonable doubt. His presumption of innocence does  
25 not end when you begin your deliberation but it accompanies

1 the defendant throughout the trial until you reach your  
2 verdict of guilt based upon the evidence satisfying you of  
3 that guilty beyond a reasonable doubt. The presumption of  
4 innocence is like a robe of righteousness placed upon the  
5 shoulders of the defendant which remains with the defendant  
6 until it has been stripped from the defendant by evidence  
7 satisfying you of the defendant's guilt beyond a reasonable  
8 doubt. Now, the presumption of innocence is not immediately  
9 (sic) a legal theory, it is not just a legal phrase. It is a  
10 substantial right to which every defendant is entitled unless  
11 you the jury are satisfied from the evidence that the  
12 defendant is guilty beyond a reasonable doubt. What is a  
13 reasonable doubt? A reasonable doubt is the kind of doubt  
14 that would cause a reasonable person to hesitate to act. Now,  
15 there are two types of evidence which are generally presented  
16 during a trial, direct evidence and circumstantial evidence.  
17 Direct evidence is the testimony of a person who claims to  
18 have actual knowledge of a fact, such as an eyewitness. It is  
19 the evidence that immediately establishes the main fact to be  
20 proved and does not require deduction. Circumstantial  
21 evidence is proof of a chain of facts and circumstances  
22 indicating the existence of a fact. It is evidence which  
23 immediately establishes collateral facts from which the main  
24 fact may be inferred. Circumstantial evidence is based on  
25 inference and not on personal knowledge or observation.

1 Crimes may be proven by circumstantial evidence. The law  
2 makes no distinction between circumstantial and the weight to  
3 be given circumstantial evidence. However, to the extent that  
4 the State relies on circumstantial evidence all of the  
5 circumstances must be consistent with each other and when  
6 taken together point conclusively to the guilt of the accused  
7 beyond a reasonable doubt. If these circumstances merely  
8 portray the defendant's behavior is suspicious the proof is  
9 failed. The State has the burden of proving the defendant  
10 beyond a reasonable doubt. The burden rests with the State  
11 regardless of whether the State relies on direct evidence,  
12 circumstantial evidence or a combination of the two. You  
13 should weigh all the evidence in the case. After weighing all  
14 the evidence if you are not convinced of the guilt of the  
15 defendant beyond a reasonable doubt, you must find the  
16 defendant not guilty. Now, in order to establish criminal  
17 liability, criminal intent is required. Criminal intent must  
18 be proven by the State beyond a reasonable doubt. Criminal  
19 intent is always a matter that must be determined by the jury  
20 from the circumstances surrounding the situation. There is no  
21 way to prove intent to a mathematical certainty. There is no  
22 way medical science can dissect a person's brain to determine  
23 what the person had on his mind, so the law says that criminal  
24 intent may be inferred from the circumstances shown to those  
25 existed. This is how you make a determination of whether or

1 not the element requiring intent was present. It is not  
2 necessary to establish intent by direct and positive evidence.  
3 Intent may be established by the inference in the same way as  
4 you -- as in the same way as any other fact by taking into  
5 consideration the acts of the parties and all the facts and  
6 circumstances of the case. Criminal intent is a mental state,  
7 a conscious wrongdoing. It is up to you to determine what the  
8 defendant intended to do based on the circumstances shown in  
9 existence. Criminal intent can arise from the action or  
10 failure to act. Criminal intent is a state of mind that  
11 operates jointly with an act or omission in the commission of  
12 a crime. Criminal content is a mental state. Criminal  
13 liability is normally based on the concurrence of two factors,  
14 an evil meaning hand -- excuse me, an evil meaning mind and an  
15 evil doing hand. Suspicion however is strong -- however  
16 strong is not enough to sustain a conviction. The evidence  
17 presented by the State must be substantial evidence that tends  
18 to prove the guilt of the defendant beyond a reasonable doubt.  
19 Now, I remind you that the charge -- the fact that the  
20 defendant was arrested, charged, and indicted in this case is  
21 not evidence in this case and cannot be considered by you as  
22 evidence of the guilt of this case, nor does it create any  
23 inference or presumption of guilt. This document and  
24 indictment simply -- is simply the formal written instrument  
25 which contains the charges made against the defendant. It is

1 the formal document by which this case is brought into court.  
2 Now, the indictments in this case charge the defendant John  
3 Alexander Webb with three separate violations of the drug  
4 distribution law as defined by Section 37-23-20 of the Code of  
5 Laws of South Carolina. Indictment number 2017-GS-26-3144  
6 relates to Renee J. on or about July 7<sup>th</sup>, 2016. Indictment  
7 number 2017-GS-26-3145 relates to Kristie S. on or about April  
8 8<sup>th</sup>. And indictment number 2017 -- relates to Alexandria C. on  
9 or about -- excuse me, indictment related to Kristie S.  
10 relates to a period between April the 8<sup>th</sup>, 2016 and October  
11 12<sup>th</sup> -- 15<sup>th</sup>, 2016. And indictment number 2017-GS-26-3146  
12 relates to Alexandria C. on or about October the 27<sup>th</sup>, 2016.  
13 Each indictment charges a separate and distinct offense. You  
14 must decide each indictment on the elements and the law  
15 applicable to it uninfluenced as to your decision as to any of  
16 the other indictments. The defendant may be convicted or  
17 acquitted on any or all of the offenses charged. You will be  
18 asked to write a separate verdict of guilty or not guilty for  
19 each indictment. I remind you that the fact the defendant was  
20 arrested, charged, and indicted in this case is not evidence  
21 in his case and cannot be considered by you as evidence of  
22 guilt in this case nor does it create any presumption of  
23 innocence or therefore inference of guilt. The indictments  
24 are simply the formal written instruments which contain the  
25 charges made against the defendant. They are the formal

1 instruments which brought the cases to Court. Now, as I said  
2 earlier, you are the sole judges of the facts of this case.  
3 You are to determine only if the defendant is guilty or not  
4 guilty based upon the testimony and evidence presented in the  
5 trial and after applying the law as I've given it to you. If  
6 from the evidence, you have a reasonable doubt as to whether  
7 or not the defendant is guilty it is your duty to acquit him  
8 and write the two words not guilty. Under the oath you took  
9 you swore to try this case based only and solely on the  
10 testimony, evidence, and law presented and heard in this  
11 courtroom. It is your duty to lay aside all bias, or  
12 prejudice, or sympathy you may have in reaching your verdict.  
13 You have no enemies to reward -- excuse me, no friends to  
14 reward or enemies to punish in this case. Now, madam  
15 forelady, ladies and gentlemen of the jury, I've prepared a  
16 verdict form for you to use in your deliberations and the  
17 bailiff will hand it to you there. As I said, there are three  
18 separate indictments in this case, and you will be given the  
19 indictments identified by number. The verdict form provides,  
20 we the jury unanimously find the defendant John Alexander Webb  
21 on indictment number 2017-GS-26-03144 guilty of the violation  
22 relating to Renee G. -- J., excuse me, on July the 7<sup>th</sup>, 2016;  
23 or not guilty. Indictment number 2017-GS-26-03145 you would  
24 find either guilty to the violation relating to Kristie S.  
25 between April the 8<sup>th</sup>, 2016 and October the 15<sup>th</sup>, 2016 or not



1 guilty. And on the third indictment number 2017-GS-26-3146  
2 you would find that the defendant is either guilty of the  
3 violation relating to Alexandria C. on October the 27<sup>th</sup>, 2016  
4 or not guilty. Whatever verdict you reach it must be  
5 unanimous as to each indictment. Although it is a unanimous  
6 verdict, madam foreperson, it would be up to you to check the  
7 appropriate block as to which is the verdict of the jury on  
8 that particular indictment, either guilty or not guilty. You  
9 would then sign it and date it accordingly. I will ask you to  
10 return to the jury room. Do not begin your deliberations  
11 until I send back the verdict form together with the exhibits  
12 that have been introduced in the case. If you would please,  
13 ma'am, hand it to the bailiff the verdict form. As soon as --  
14 I need to take up some matters with the attorneys but as soon  
15 as we've completed that, that should just take a few minutes,  
16 I'll send back the verdict form together with the exhibits.  
17 Once you receive those from the bailiff then if you would  
18 start your deliberations and once you have reached a verdict  
19 as to each of the three indictments knock on the door and  
20 we'll return and come and receive your verdict. Alright, with  
21 that I will ask you to retire to the jury room except for the  
22 alternate. You remain with us, please.

23 **(JURY RETIRES TO JURY ROOM AT 4:28PM)**

24 **THE COURT:** Alright, are there any exceptions to the  
25 charge or any additional requests for charge from the State?

1           **MR. HUMPHRIES:** Can you give me just a minute to speak  
2 with counsel for the State?

3           **THE COURT:** Alright.

4           Any issues?

5           **MR. MARTIN:** Not at this time.

6           **MR. OSKIN:** Nothing from the State.

7           **MR. HUMPHRIES:** Not from the defense.

8           **THE COURT:** Alright, thank you.

9           Alright, if you would please check and see that the  
10 exhibits that need to go back do go back and the ones that  
11 were not admitted aren't included.

12           **MR. MARTIN:** Your Honor, for clarification, the CD stays  
13 out here because if they want to listen to it ---

14           **THE COURT:** That's right.

15           **MR. MARTIN:** --- but the three prescriptions may go back?

16           **THE COURT:** Sure. Yes, sir.

17           **MR. MARTIN:** Okay.

18           **THE COURT:** Alright. Madam alternate, I think you  
19 understand why you were selected. This case went two days at  
20 least and if something would have happened to one of the jury  
21 panel, of course, you would have then sat in the place. I'm  
22 sure that you probably think that I do everything but pay  
23 attention up here, but I do. I've developed over a few years  
24 at this a knack of keeping up with what goes on in the  
25 courtroom. And I noticed that during the trial that you paid

1 very careful and close attention not only to what was being  
2 said but also what was occurring in the courtroom. I want to  
3 thank you for that attention as well as service that you've  
4 given us. As I mentioned to the panel that was dismissed the  
5 other day, the balance of the panel, that this service as a  
6 juror is perhaps the finest thing that we do as citizens. Of  
7 course, it makes our system of law and justice what it is,  
8 which is citizen participation. I thank you for that. Now, I  
9 wish I could do something for you but I'm sure that when the  
10 Judge qualified you on Monday, he asked you the question of  
11 whether anybody had served in the last three years. Well I  
12 can't do anything for you except to say that you won't have to  
13 serve for another three years or be called to serve. But I do  
14 want to thank you for your service. Now, Mr. Clerk, is there  
15 anything that the juror needs to do? Of course, she needs to  
16 get anything she has in the jury room.

17 **CLERK:** If you have anything in the jury room let us  
18 know, and if you go downstairs to the Clerk's Office they will  
19 finish helping you.

20 **ALTERNATE:** Okay, thank you.

21 **THE COURT:** Alright, and again, thank you so much. We do  
22 appreciate it.

23 Alright, gentlemen I want to thank you as I use the word  
24 very meaningfully, your patience with the Court but also, I  
25 want to thank you for your professional way that you

1 represented your clients and the parties. It's a pleasure for  
2 somebody as old and kind of worn out as I am to see that  
3 people still have appreciation and interest in performing in a  
4 professional fashion. You exempted that excellence and I want  
5 to thank you for it.

6 **MR. HUMPHRIES:** Thank you, Your Honor.

7 **THE COURT:** Thank you very much. It's in the jury's  
8 hands and we'll see what happens.

9 Alright, we will stand at ease.

10 **(RECESS)**

11 **(JURY BEGINS DELIBERATIONS AT 4:44PM)**

12 **THE COURT:** Alright, I understand the jury has reached a  
13 verdict. Anything from the State before we bring them back?

14 **MR. MARTIN:** No, Your Honor.

15 **THE COURT:** Defense?

16 **MR. HUMPHRIES:** No, sir.

17 **THE COURT:** Very good.

18 Ask the jury to join us.

19 **(JURY ENTERS COURTROOM AT 5:11PM)**

20 **THE COURT:** Madam forelady, I understand that you have  
21 reached a verdict.

22 **FORELADY:** We have, Your Honor.

23 **THE COURT:** If you would please pass it up to the  
24 bailiff.

25 Mr. Clerk, if you would please publish the verdict.

1           **CLERK:** Yes, sir.

2           State of South Carolina, County of Horry versus John  
3 Alexander Wedd, we the jury unanimously find the defendant  
4 John Alexander Webb indictment number 2017-GS-26-3144 guilty  
5 of the violation relating to Renee J. on July 7<sup>th</sup>, 2016.  
6 Indictment number 2017-GS-26-3145 guilty of the violation  
7 relating to Kristie S. between April 8<sup>th</sup>, 2016 and October  
8 15<sup>th</sup>, 2016. Indictment number 2017-GS-26-3146 guilty in  
9 violation relating to Alexandra C. on October 27<sup>th</sup>, 2016.  
10 Signed by the foreman Windy Buffkin, dated 4-23-19.

11           Ladies and gentlemen of the jury, if this is your verdict  
12 so signify by raising your right hand.

13           **THE COURT:** Let the record reflect that all jurors  
14 acknowledged the verdict. And is this still your verdict? If  
15 so, also raise your right hand. Very good. Thank you very  
16 much.

17           Are there any questions from the State?

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

19           **THE COURT:** Anything from the defense?

20           **MR. HUMPHRIES:** Not as to the jury, Your Honor.

21           **THE COURT:** Alright. Madam forelady, ladies and  
22 gentlemen of the jury obviously you didn't ask to be here, and  
23 you have done a very valuable service to the system of justice  
24 here in South Carolina and I do appreciate it. As I told the  
25 alternate when I excused her that I know that it looks like

1 I'm not paying attention to anything but I've developed I  
2 guess a certain ability or knack to keep up with what's going  
3 on in a courtroom. I notice that all of you paid very careful  
4 and close attention to what was happening and so by doing your  
5 duty as jurors, because that's what the whole system of  
6 justice is about is for citizen participation, and I thank  
7 you. Court is never interested in a verdict, only how that  
8 verdict is reached, and you were a fine example of our system  
9 and how it should work and does work. I thank you very much.  
10 This is the last case to be tried this week, so you are going  
11 to be excused. Although I would like to do something for you  
12 in appreciation of your service this week, obviously I can't.  
13 The only thing I can do is remind you, as I did the alternate,  
14 that I understand that when you were qualified on Monday that  
15 you were asked how many had served in the last three years.  
16 The only thing I can do for you is tell you that you will not  
17 have to serve another three years, but I do thank you for your  
18 service today. Again, if you have anything --- you will show  
19 them how to get out? Alright, very good and again I want to  
20 thank you for your service as well as the fact that you paid  
21 very careful and close attention and I cannot say more than  
22 thank you. Alright, everyone remain seated while the jury  
23 retires from the courtroom.

24 (JURY EXCUSED AT 5:16PM)

25 THE COURT: Are you ready to proceed?

1           **MR. OSKIN:** Yes, sir, Your Honor.

2                   **THE COURT:**    Alright.

|   |                |
|---|----------------|
| 3 | Defense ready? |
|---|----------------|

4                   **MR. HUMPHRIES:** Ready, Your Honor.

5                   **THE COURT:**    Alright.

6 | **MR. HUMPHRIES:** I need to renew my motions ---

7                   **THE COURT:**   Certainly.

8           **MR. HUMPHRIES:**   --- Your Honor.

9           **THE COURT:** Let's do this, alright. The motion is noted  
10 for the record and I'll give you 10 days to prepare your  
11 motion.

12        **MR. HUMPHRIES:** Very good. Thank you, Your Honor.

13                   **THE COURT:** Any objection?

14           **MR. MARTIN:** Your Honor, so long as it's on the record I  
15 think it's sufficient.

16                   **THE COURT:** Okay. Very good.

17           **MR. OSKIN:** Court's indulgence as the sentencing sheets  
18 are prepared, Your Honor.

19                   **THE COURT:**    Alright.

20           **MR. OSKIN:** We'll have that momentarily.

21           **THE COURT:** Alright. Very good. Thank you. We'll stand  
22 at ease.

23 (RECESS)

24           **MR. MARTIN:** Your Honor, may I approach with the  
25 sentencing sheet?

1           **THE COURT:** Certainly.

2           **MR. MARTIN:** The State is ready whenever Your Honor is  
3 ready.

4           **THE COURT:** Very well.

5           Alright, approach please.

6                                   **(BENCH CONFERENCE)**

7           **MR. HUMPHRIES:** We're ready to proceed.

8           **THE COURT:** Alright, approach please.

9                                   **(BENCH CONFERENCE)**

10          **THE COURT:** Alright, what does the State have to say?

11          **MR. MARTIN:** Thank you, Your Honor. This certainly is  
12 not a common situation that we are confronted with. But I do  
13 think it's important to provide a little background  
14 information. I will be very brief and then give Your Honor  
15 our recommendation. Judge, this was not a witch hunt or some  
16 sort of -- anything like that by the department. In an  
17 unrelated case, and it is relevant for sentencing, in an  
18 unrelated case that was ultimately dismissed the defendant was  
19 accused of allegedly sexually assaulting a patient who he was  
20 improperly prescribing medication for. That case was  
21 dismissed because that victim overdosed, passed away due to a  
22 drug overdose. So, this crime, these three crimes that he's  
23 been convicted of go a little deeper than what might appear on  
24 the surface. Looking at his prior record, he does only have  
25 one prior conviction, that's a 2002 contributing to the



1 delinquency of a minor. During our plea negotiations and  
2 talks with Mr. Humphries, which have also included Solicitor  
3 Mary Ellen Walter's talks with him, we offered him as low as a  
4 misdemeanor. He rejected that and elected to go to trial.  
5 And, Judge, now is the time when he has to face the  
6 consequences of that decision. I don't know what is  
7 appropriate for someone who lacks a lengthy prior record, but  
8 we would ask for some jail time, but we'll leave it in the  
9 Court's discretion as to the length. He is facing up to five  
10 years on each felony conviction.

11 **THE COURT:** Well, it's also a fine, is it now?

12 **MR. MARTIN:** There is, Your Honor, and that is included  
13 on the sentencing sheet as well. Thank you. The amount is up  
14 there by the charge.

15 **THE COURT:** Oh I see.

16 **MR. MARTIN:** It's \$10,000.

17 **THE COURT:** Ten thousand. And it is a felony?

18 **MR. HUMPHRIES:** Yes, sir, it is.

19 **MR. MARTIN:** Yes.

20 **THE COURT:** And what was the conviction and when was it?

21 **MR. MARTIN:** In 2002, contributing to the delinquency of  
22 a minor, South Carolina.

23 **THE COURT:** Alright.

24 What do you have to say on behalf of the defendant?

25 **MR. HUMPHRIES:** Alright, let's start here, first of all

1 as to the State's reference regarding a charge which was  
2 dismissed without having the opportunity to litigate, I take  
3 exception to that being used in the charging decision. You  
4 know, the very fact that he was charged, no fault of his own  
5 that the case could not have been litigated. There was an  
6 offer to plea in that case, which was rejected. We intended  
7 to go to trial and felt firmly convinced that we would have  
8 prevailed at that time. So, the suggestion that a charge for  
9 which there is no conviction can be used ---

10 **THE COURT:** Oh, of course, I'm not going to consider  
11 that. I took it as background as to how it developed this  
12 particular case.

13 **MR. HUMPHRIES:** So, circling back to these charges, the  
14 Court's heard the facts and circumstances surrounding these  
15 charges. They were low level controlled substances prescribed  
16 not in an abusive fashion to his wife, his stepdaughter, and a  
17 co-worker. This was a case that, quite frankly, we agreed on  
18 most of the facts, we just disagreed on whether or not he was  
19 criminally culpable given his circumstances. That's why we  
20 tried the case. We didn't try the case in a frivolous manner,  
21 asserting his right to trial callously or carelessly. There  
22 was a legitimate issue to be decided and that has been decided  
23 by the jury. That prior conviction is 17 years ago. Since  
24 that time, he was a practicing chiropractor. He paid for his  
25 own medical school, working while he did that. Ultimately was

1 able to gain admission to the residency program at Grand  
2 Strand Regional Medical Center. The charge, in and of itself,  
3 in fairness absolutely curtails any other actions he would be  
4 able to take on his part to ever practice medicine anywhere.  
5 So, that investment of time both in medical school and the  
6 residency is forever lost to him, quite frankly, because of  
7 his inability to produce records related to these three  
8 individuals who were close to him. So, if we're talking about  
9 punishment, punishment has been exacted. If we're talking  
10 about life changing consequences for this violation, that has  
11 been accomplished. He's 43 years old. He's a Compliance  
12 Officer in a medical practice in Boston, which is quite  
13 frankly where he had to go to get a job. So, he's moved very  
14 far away from family and friends in order to do that. But he  
15 is gainfully employed. Any sentence that would involve any  
16 jail time whatsoever is certainly going to substantially  
17 impact his ability to provide for his 12-year-old son whom he  
18 supports and loves. This quite frankly, Your Honor, is a case  
19 whereas the State has proposed it, a technical violation, it  
20 has tremendous consequences just by virtue of the condition on  
21 the rest of his life, in terms of what he does for the rest of  
22 his life. So, if we're talking about punishment, he's had it.  
23 I believe it is entirely appropriate in this case to provide a  
24 sentence suspended upon the payment of a fine. Give him the  
25 opportunity on probation to pay that fine and termination of

1 probation upon payment of the fine. The punishment's been  
2 exacted. He's not a danger to the community as a result of  
3 this charge. This -- and quite frankly if the State or the  
4 Court for that matter is concerned about the ability for this  
5 case to be -- or the conduct within this case to be repeated,  
6 that just can't happen because he's not ever going to be a  
7 medical doctor based on these conditions. I believe that is  
8 fair under the facts of this case and that's what I would ask  
9 the Court if you would consider.

10 **THE COURT:** Alright.

11 Mr. Webb, how old are you? I have 42 and 43.

12 **DEFENDANT:** I'll be 43 on Monday, sir.

13 **THE COURT:** Oh, so you'll soon be 43. Alright, how far  
14 have you gone in school?

15 **DEFENDANT:** I have a Doctor in Chiropractic. I have an  
16 MBA in Health Care Administration. I have a Medical Degree.  
17 I'm completing a Master's in Bioengineering at Harvard right  
18 now.

19 **THE COURT:** And you are a Compliant ---

20 **DEFENDANT:** I work as a Chief Operations Officer at  
21 Harvard Medical Center for one of their divisions. I'm over  
22 their compliance the division there.

23 **THE COURT:** How long have you been there?

24 **DEFENDANT:** For two years, sir, this month.

25 **THE COURT:** And any dependent children?

1           **DEFENDANT:** I have a 12-year-old son.

2           **THE COURT:** Is that your only child?

3           **DEFENDANT:** Yes, sir.

4           **THE COURT:** And where is he?

5           **DEFENDANT:** He's in Chicago with his mom.

6           **THE COURT:** Do you contribute towards his support?

7           **DEFENDANT:** Absolutely. Yes, sir.

8           **THE COURT:** Do you do it through court order?

9           **DEFENDANT:** It's through court order. Yes, sir.

10          **THE COURT:** And it's exercised through what Court?

11          **DEFENDANT:** It's through Darlington County.

12          **THE COURT:** Okay. Have you ever been treated for drug or  
13 alcohol abuse or mental illness?

14          **DEFENDANT:** Never.

15          **THE COURT:** Are you under any medication, drugs, or  
16 alcohol at this time?

17          **DEFENDANT:** No, sir.

18          **THE COURT:** Are you aware of any physical, emotional, or  
19 mental condition that may affect your ability to appreciate  
20 what you are faced with today?

21          **DEFENDANT:** No, sir.

22          **THE COURT:** And your home is in Boston?

23          **DEFENDANT:** My home is in Hartsville still. My mom just  
24 passed away. I have her home there, which is where I met  
25 Agent Strickland earlier. But I've been renting an apartment

1 in Boston because it's the only place ---

2 **THE COURT:** But you do have a residence here in South  
3 Carolina?

4 **DEFENDANT:** Well, my mom's home is there. I haven't  
5 moved into it. I need to clean it up. I haven't lived there  
6 in 20 years.

7 **THE COURT:** Alright, anything further from the State?

8 **MR. MARTIN:** No, Your Honor, we still stand by our  
9 recommendation and the case we presented.

10 **THE COURT:** Was there any injury resulting from any of  
11 the reports that was maintained -- I mean, were there any  
12 ramification, physical?

13 **MR. MARTIN:** I think I understand what you're asking,  
14 regarding the three people that he prescribed ---

15 **THE COURT:** Or anybody.

16 **MR. MARTIN:** Well, there were I think 19 total. Your  
17 Honor, it does not appear that we are aware of any of the  
18 people involved in those 19 scripts that suffered any sort of  
19 medical condition as a result of that.

20 **THE COURT:** That's the thing that concerns me.

21 Did he spend any time in jail?

22 **MR. HUMPHRIES:** No, sir.

23 **THE COURT:** Okay.

24 Alright, Mr. Webb, is there anything you'd like to say?

25 **DEFENDANT:** Your Honor, all I've wanted to do my entire

1 life if just help people. I've continued my education in  
2 order to do that and I've racked up over \$700,000 in student  
3 loans. I've taken two degrees at one time and worked my butt  
4 off and helping my wife through law school and just everything  
5 I did to try to better myself and to try to help people. And  
6 I honestly felt that being a physician was the one thing God  
7 put me on this planet to do. Not being able to do that is  
8 pretty crushing. I didn't go anything with any ill intent or  
9 trying to hurt anyone. I was trying to help my people out  
10 that I loved, you know, doing what I'd been trained and taught  
11 to do. I'm just sorry I have to be here today. I apologize.  
12 I just ask that you show me as much mercy as you can.

13 **THE COURT:** Alright, anything else from the State?

14 **MR. MARTIN:** No, Judge.

15 **THE COURT:** Anything else on behalf of the defendant?

16 **MR. HUMPHRIES:** No, sir.

17 **THE COURT:** The State of South Carolina, County of Horry,  
18 indictment number 2017-GS-26-3144, the sentence of the Court  
19 will be the defendant John Alexander Webb be committed to the  
20 county detention center for a term of 90 days, provided upon  
21 payment of costs and assessments as applicable, the balance is  
22 suspended with probation for one year to the appropriate South  
23 Carolina Probation, Parole and Pardon Services. Special  
24 conditions is that probation to termination upon performance  
25 of 240 hours of public service employment. Ninety days might

1 be served on the weekends beginning at an agreed to time.  
2 Undergo substance abuse counseling and alcohol testing and  
3 treatment as directed. Indictment number 2017-GS-26-3145, the  
4 sentence of the Court is the defendant be committed to the  
5 county detention center for 90 days provided upon payment of  
6 costs and assessments as applicable, the balance is suspended  
7 with probation for one year. Probation is to termination upon  
8 performance of public service employment, 240 hours.  
9 Substance abuse counseling and alcohol testing and treatment.  
10 Indictment number 2017-GS-26-3146 the sentence of the Court  
11 that the defendant be committed to the county detention center  
12 for a period of 90 days, provided upon payment of costs and  
13 assessments as applicable, the balance is suspended with  
14 probation for one year. Special conditions is defendant is to  
15 perform 240 hours of public service employment. He may serve  
16 his time on weekends. Probation to termination upon payment  
17 of fines, fees, costs and assessment, and public service  
18 employment. I think I got that right. My intent is to keep  
19 you in the county rather than in the State correctional  
20 institute, also on probation you will be able to serve it in  
21 hopefully your county -- and it's on the weekends. And you  
22 can transfer your probation when you're not incarcerated on  
23 the weekends, you can move it to, I guess, Boston. But that's  
24 the intent. To be very candid with you, it is a unique  
25 sentence for a unique type of case.



1           Alright, anything else from the State?

2           **MR. MARTIN:** Just clarification so that we understand the  
3 sentence correctly, Your Honor. Is he serving 90 days and  
4 then after the 90 days ---

5           **THE COURT:** He serves the 90 days on the weekends.

6           **MR. MARTIN:** And in addition to that 90 days he's doing  
7 one year of probation.

8           **THE COURT:** And 240 hours of public service. The one  
9 year probation terminates upon the completion of the 240 hours  
10 of public service.

11          **MR. HUMPHRIES:** And as for the appearance date for the  
12 weekend time, Your Honor?

13          **THE COURT:** I was leaving it up to y'all. When do you  
14 want to do it?

15          **MR. MARTIN:** Will the 90 days be running consecutively or  
16 concurrently?

17          **THE COURT:** All are concurrent.

18          **MR. MARTIN:** I may have missed that. I'm sorry.

19          **THE COURT:** In other words, one 90 day sentence to serve  
20 on the weekends. When do you want to start?

21          **MR. MARTIN:** With weekend time, Your Honor, we typically  
22 request Friday at 5:30 to Sunday at 5:30.

23          **THE COURT:** Okay.

24               Do you understand?

25          **DEFENDANT:** Yes, sir.

1           **THE COURT:** It's going to be on probation ---

2           **DEFENDANT:** We notify the defendant, obviously, that if  
3 he fails to turn himself in that he can be brought back before  
4 the Court.

5           **THE COURT:** Exactly, but also I would -- well, let's see  
6 -- you do understand that?

7           **DEFENDANT:** Yes, sir.

8           **THE COURT:** You report -- when do you want it to start?

9           **DEFENDANT:** Can I get back -- if I can do this in Boston  
10 I guess I need to get back there and make the arrangements and  
11 figure out ---

12           **THE COURT:** Well, you're going to have to make the  
13 arrangement through probation.

14           **MR. MARTIN:** Probation would be once he's completed his  
15 90 days local time here at J. Rueben Long then he could apply  
16 for his probation to be transferred to Boston.

17           **THE COURT:** Alright.

18           **MR. MARTIN:** He will need to report to probation  
19 tomorrow.

20           **THE COURT:** Right.

21           **MR. MARTIN:** Then he'll need to turn himself in at J.  
22 Rueben Long Friday, this coming Friday at 5:30.

23           **THE COURT:** Again, this is a unique thing. To be honest  
24 with you, I don't see ---

25           **MR. HUMPHRIES:** Court's indulgence.

1           Judge, if we can have the appearance date not this Friday  
2 but next Friday it would give him an opportunity to go back to  
3 Boston, see if he can make arrangements with his employer to  
4 hold his position or to make some arrangements about the  
5 travel, otherwise he will lose his job. So, we're really only  
6 asking for one additional week. He may elect, depending on  
7 the circumstances, to do a straight versus the weekends if he  
8 can work that out with his employer. But he would need -- I  
9 mean, we're already at Tuesday, he would need until next  
10 Friday to appear. So, he would appear Friday either to do  
11 weekend time or he would appear Friday to do his 90 days.

12           **THE COURT:** Any problem?

13           **MR. MARTIN:** We'll leave that in the Court's discretion.  
14 We would obviously ask that it start this weekend.

15           **THE COURT:** Why?

16           **MR. MARTIN:** Just for the fear ---

17           **THE COURT:** I mean, he's not a threat. I mean, you  
18 haven't got -- I mean, this is a process crime really if you  
19 want to know the truth.

20           **MR. HUMPHRIES:** We're talking about May 3<sup>rd</sup>.

21           **MR. MARTIN:** And one more point of clarification that was  
22 brought to my attention from the clerk of court. Your Honor,  
23 we need to have an underlying sentence ordered. So, we need  
24 something suspended to probation. So, is Your Honor saying  
25 one year suspended to 90 days and probation for one year?

1           **THE COURT:** Yeah.

2           **MR. MARTIN:** Okay.

3           **THE COURT:** 90 days suspended upon probation -- or  
4 probation suspended -- no, 90 days suspended upon payment of  
5 costs and assessments, so he pays them up front.

6           **MR. MARTIN:** Well, additionally we need an amount of time  
7 suspended to probation.

8           **THE COURT:** One year.

9           **MR. MARTIN:** Thank you.

10          **THE COURT:** The balance is suspended to probation for one  
11 year.

12          **MR. HUMPHRIES:** Alright, so -- and just so we don't have  
13 to all gather back here again.

14          **THE COURT:** Thank you.

15          **MR. HUMPHRIES:** What the State is saying is that if we  
16 have a 90 day active sentence and we don't have a period of  
17 incarceration suspended upon 90 days active sentence then  
18 there is no ability then to impose a probationary sentence.

19          **THE COURT:** Well, actually ---

20          **MR. HUMPHRIES:** But if you're intention is to sentence to  
21 90 days suspended upon one year probation then the 90 day  
22 sentence would be the only sentence.

23          **THE COURT:** No, the 90 days is to be served on the  
24 weekends.

25          **MR. HUMPHRIES:** Right.

1           **THE COURT:** So, I've given him the opportunity to do  
2 something productive between the weekdays.

3           **MR. HUMPHRIES:** And I absolutely appreciate that. The  
4 issue is if he has an active sentence of 90 days and he  
5 performs and he satisfies that 90 day active sentence and  
6 there is no sentence that suspended to allow the probation.

7           **THE COURT:** No, probation.

8           **MR. HUMPHRIES:** So, that's your intention?

9           **THE COURT:** Well, that's what it reads.

10          **MR. HUMPHRIES:** Okay, so if he does the 90 days he's not  
11 on probation?

12          **THE COURT:** Oh.

13          **MR. HUMPHRIES:** Do you see what I'm saying?

14          **MR. OSKIN:** Your Honor, if I may interject.

15          **THE COURT:** Certainly.

16          **MR. OSKIN:** And certainly Mr. Humphries can correct me if  
17 I'm wrong.

18          **THE COURT:** Wait a minute. No, there's something else in  
19 there because I also provided performance of 240 hours.

20          **MR. OSKIN:** Yes, sir. I think I have the verbiage that  
21 will straighten it out.

22          **THE COURT:** Alright, let's do that.

23          **MR. OSKIN:** Please correct me if I'm wrong Mr. Humphries.  
24 If I wanted to execute that sentence that you just carried out  
25 at sentencing; if that were a guilty plea, I would recommend

1 one year suspended to 90 days, the balance of that year to be  
2 served with community service. The balance could be completed  
3 after 240 hours -- for the clerk of court it keeps it linear.  
4 One year suspended to 90 days service available to do on the  
5 weekend time, which is what Your Honor ---

6 **THE COURT:** Well, that's what I intended.

7 **MR. OSKIN:** Okay, and the balance of that year, i.e 9  
8 months ---

9 **THE COURT:** Well, the thing is I've also provided for  
10 PTUP upon the completion of 240 hours.

11 **MR. OSKIN:** Yes, sir. I understand that completely. And  
12 the balance is PTUP'ed based off that community service. He  
13 would first serve that 90 days whether it be a straight 90 day  
14 sentence or the weekend, whatever he elects to do. That's  
15 just the language that we use here for the clerk of court. I  
16 just wanted to make sure that I accomplished your intentions  
17 there.

18 **THE COURT:** That was my intention. Admittedly, I don't  
19 think I've ever done it before. I'm trying to fit what I  
20 consider to be an appropriate sentence ---

21 **MR. OSKIN:** That's completely clear and understood. I  
22 just wanted to make sure the clerk understood the actual  
23 sentence itself.

24 **THE COURT:** Alright.

25 **MR. OSKIN:** Thank you, sir.

1           **THE COURT:** Very well. Good luck.

2           **MR. HUMPHRIES:** And the appearance date is May 3<sup>rd</sup> at  
3 5:30.

4           **THE COURT:** That's right. So, it begins -- that will be  
5 the date then.

6           **MR. HUMPHRIES:** That's correct.

7           **THE COURT:** The beginning of the weekend service.

8           **MR. HUMPHRIES:** Yes, sir.

9           **THE COURT:** And it will either go the weekends or the 90  
10 days.

11           **MR. HUMPHRIES:** Yes, sir. And he will have to report to  
12 probation. Will he come to the courthouse?

13           **CLERK:** I talked to Russell. He said call him when you  
14 get done. But he said probably have you report tomorrow at  
15 9:00AM at the probation office. But call him when you get  
16 done here he said.

17           **MR. HUMPHRIES:** Okay.

18           **THE COURT:** 5-3-19.

19           **MR. MARTIN:** Yes.

20           **THE COURT:** Okay. That works.

21           **MR. MARTIN:** That works for us, Judge.

22           **MR. HUMPHRIES:** Your Honor, if we could review the  
23 sentence sheets just to make sure we're all on the same page.

24                                   **(ADJOURNED)**

25

1 STATE OF SOUTH CAROLINA TRANSCRIPT OF RECORD

2 COUNTY OF HORRY CASE NO: 2017-GS-26-03145

2017-GS-26-03146

3 2017-GS-26-03147

4 -----

5 B E F O R E: The Honorable Alexander Macauley

June 18, 2019

6 -----

7

8 STATE OF SOUTH CAROLINA,

9 Plaintiff,

10 vs.

11 JOHN ALEXANDER WEBB,

12 Defendant.

13 -----

14 APPEARANCES:

15

George Henry Martin, Esq.

16 Mary-Ellen Walter, Esq.

Attorneys for the Plaintiff/State.

17

18

19 Fran Humphries, Esq.

Attorneys for Defendant.

20

21

22

23

24

Natalie Dahl, RPR

25

Court Reporter:



1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Thank you. You may take your seats.

3 MR. HUMPHRIES: Good morning.

4 THE COURT: Good morning, to you all. Let's find  
5 out who is here today. We're here on the case of  
6 State versus John Alexander Webb, motion for a new  
7 trial on a conviction of three indictments,  
8 2017-GS-26-3144, 3145 and 3146.

9 Let's see, Mr. Martin.

10 MR. MARTIN: Good morning.

11 THE COURT: Is anyone assisting you?

12 MR. MARTIN: Seth Oskin was here last time at the  
13 trial, and Mary Ellen Walter is senior solicitor in  
14 the office. This is her case actually, Mr. Oskin and  
15 I just stepped in and tried it.

16 THE COURT: So you will be appearing here?

17 MR. MARTIN: I'll do most of the talking, but  
18 they may at the appropriate time address the Court.

19 THE COURT: Of course. As a fact witness, I  
20 think -- is it Ms. Richardson?

21 MR. MARTIN: Walter.

22 MS. WALTER: Walter, Your Honor.

23 THE COURT: W-A-L-T-E-R?

24 MS. WALTER: Yes, Your Honor.

25 THE COURT: All right. I'll put you down as an

1 attorney so you can make arguments.

2 MS. WALTER: Yes, sir, thank you.

3 THE COURT: Thank you.

4 Mr. Humphries.

5 MR. HUMPHRIES: Yes, sir.

6 THE COURT: You have someone with you?

7 MR. HUMPHRIES: I have the defendant, Mr. Webb.

8 THE COURT: That is what I need to know.

9 Mr. Humphries, it is your motion.

10 MR. HUMPHRIES: Thank you, Your Honor. This is a  
11 motion for a new trial and/or a judgment of an  
12 arrested verdict. We filed this in a timely fashion.  
13 The Court --

14 THE COURT: By the way, let that be noted, that  
15 the Court gave -- this is an Horry County case and was  
16 tried in Conway, and at the close of the case, the  
17 sentence, I gave the defendant ten days or the  
18 appropriate time to file a motion, a new trial, and by  
19 agreement of the parties, inasmuch as I was going to  
20 be here in Georgetown at this term of court, and it is  
21 in the same circuit, by agreement of the parties, the  
22 hearing on the motion for a new trial is being heard  
23 here in Georgetown. I think the record is complete.

24 MR. HUMPHRIES: Thank you, Judge. As the Court  
25 remembers, these indictments essentially alleged that

1 my client prescribed medications in contravention to a  
2 statute which relegates -- purports to relegate  
3 prescribing practices and records that were to be  
4 kept. This is -- again, we are revisiting what was  
5 our directed verdict motion, the renewal of the  
6 directed verdict motion. At the close of the  
7 defendant's case, we put up no testimony, and then at  
8 the end of the trial, at verdict. And, essentially,  
9 the argument remains the same, Judge.

10 Our position was at that time that the State had  
11 an absolute failure to offer any evidence or direct  
12 reference to any statute within Article 3 of Title 44  
13 of the Code of Laws of South Carolina, or any rule  
14 issued by the Department of Health and Environment  
15 Control, which was specifically required by 44-53-390,  
16 Subsection A(4), and 44-53-340, the Code of Laws of  
17 South Carolina. Those were the statutes under which  
18 the indictments were brought.

19 Our position was that these statutes directly  
20 referenced rules and regulations that proscribed the  
21 practice of prescribed meds without maintenance  
22 records. In the testimony of the case -- or the  
23 evidence and testimony presented by the State, at no  
24 time was there any testimony creating direct reference  
25 to any statute or any DHEC reg. or regulation

1 concerning the requirement to maintain records in the  
2 prescribing of meds. None. Not one.

3 Our position is, absent that, that the jury could  
4 not find -- because the primary statutes noted that if  
5 this is against the law, then it must be in  
6 contravention of a DHEC reg. or regulation, or a code  
7 or statute within that particular chapter, and at no  
8 time was there any reference to any particular  
9 regulation or any statute within that chapter in any  
10 of the testimony or evidence provided by the State in  
11 the case in chief, and because of that, the jury could  
12 not have found my client guilty because there was an  
13 absolute void of evidence on that particular issue.

14 THE COURT: So you are talking about evidence,  
15 not what is statutory construction?

16 MR. HUMPHRIES: I'm talking about evidence.  
17 There was no testimony from any witness from the State  
18 that said DHEC regulation 106 -- just for argument's  
19 sake -- says that a physician must maintain certain  
20 records containing certain information. There was no  
21 testimony as to a specific regulation or a specific  
22 statute.

23 Now, I will concede that there was testimony from  
24 at least one witness, and perhaps two, that said  
25 physicians must do this, physicians must do that. But

1 there was no testimony regarding the authority of that  
2 requirement offered by the State through any witness.

3 THE COURT: Was there any testimony that records  
4 were not kept?

5 MR. HUMPHRIES: There was testimony that records  
6 were not produced when requested; no question about  
7 that.

8 THE COURT: But was there any testimony that was  
9 given to the issue that there are regulations out  
10 there that would require such records, was there any  
11 testimony that those records were not kept, direct  
12 testimony or evidence?

13 MR. HUMPHRIES: The only evidence from the State  
14 was that when asked by the investigator from the  
15 Bureau of Drug Control to produce those records, my  
16 client, for a variety of reasons, which were a part of  
17 the case by virtue of his statement, was not able at  
18 the time of the request from the Bureau of Drug  
19 Control's investigator to produce those records.  
20 There was evidence through my client's statement,  
21 which was played in the State's case, that he had  
22 maintained those records, but because of divorce,  
23 because of flooding, he was unable to produce those  
24 records.

25 Again, our position is that in that testimony,

1 that statute requires -- in our opinion -- requires a  
2 specific reference to a specific regulation, DHEC  
3 regulation, or specific statute which burdens my  
4 client with the obligation of maintaining and being  
5 able to produce those records. There was no  
6 testimony --

7 THE COURT: There is a statute.

8 MR. HUMPHRIES: And there was no reference to any  
9 particular statute --

10 THE COURT: There is a statute that references,  
11 and I think --

12 MR. HUMPHRIES: No, I don't --

13 THE COURT: And I think the charge was requested  
14 by the defendant, and that is that other documents  
15 required to be kept fall under this article, so that  
16 statute is there.

17 MR. HUMPHRIES: No question that it is  
18 entirely --

19 THE COURT: I just want to say that that was the  
20 charge.

21 MR. HUMPHRIES: No question. That is my point.  
22 That is the basis of my argument. Under this --

23 THE COURT: Now, be careful. I'm not sure -- you  
24 are telling me that there was testimony or direct  
25 evidence that he did not keep records?

1 MR. HUMPHRIES: No, sir. No, sir. Here is what  
2 I'm saying --

3 THE COURT: Well, are you saying there is  
4 testimony, or there is not testimony that he kept  
5 records?

6 MR. HUMPHRIES: Yes, there is testimony.

7 THE COURT: Is there any record that he did  
8 not -- I mean any evidence that he did not?

9 MR. HUMPHRIES: Only that he could not produce it  
10 at the time it was requested.

11 THE COURT: That is what I'm asking. I'm trying  
12 to find out what the basis is.

13 MR. HUMPHRIES: Yes, sir. Yes, sir. My point is  
14 this: There was a statement that was -- of my  
15 client -- which was placed into evidence by the State,  
16 which indicated he had kept the records, that he was  
17 unable to produce them at the time requested based on  
18 divorce --

19 THE COURT: Was that the audio?

20 MR. HUMPHRIES: Yes, sir.

21 THE COURT: By the way, I keep copious notes  
22 because my memory is somewhat waning; in fact, if you  
23 ask me where my car is parked right now, I probably  
24 couldn't tell you. But I do take rather copious  
25 notes, and I went over them right before I came in

1 this morning, that there was an audio stipulation and  
2 I didn't know what -- but it looked like there was a  
3 conversation between Inspector Strickland --

4 MR. HUMPHRIES: Correct.

5 THE COURT: -- and the defendant.

6 MR. HUMPHRIES: Yes, sir.

7 THE COURT: And it was by stipulation that it  
8 would be admitted into evidence?

9 MR. HUMPHRIES: Yes, sir. No question. And it  
10 was played for the jury.

11 So there was that evidence; it existed. Our  
12 position is that the statute under which he was  
13 charged craves direct reference to a statute or  
14 regulation within this chapter. Our point is this:  
15 While there was testimony from the inspector about  
16 this is what he is required to do as a doctor, and  
17 primarily he has to produce them upon request, there  
18 was never any reference, no legal authority, cited by  
19 the State referencing any specific DHEC regulation or  
20 statute within that chapter that established that  
21 legal requirement.

22 The statute under which he was charged just said  
23 you must maintain records in accordance with this  
24 statute or any code section promulgated by DHEC, and  
25 they were not -- there was no direct testimony



1 regarding what those statutes were.

2 Our position is that the jury having not heard  
3 legal authority to require that, they could not or  
4 should not have found my client guilty for any of the  
5 -- any of the three indictments, because there was no  
6 legal authority established by the evidence of the  
7 State upon which the jury could rely in order to find  
8 him guilty.

9 THE COURT: Was there any evidence from the State  
10 to establish that he had not provided -- did not  
11 document the three -- treatment of the three named --

12 MR. HUMPHRIES: No, sir. And notably -- and of  
13 course the State puts up the case the way they wish  
14 to, but none of the three patients --

15 THE COURT: In a criminal charge -- and this was  
16 a felony; was it not?

17 MR. HUMPHRIES: It absolutely is.

18 THE COURT: And we usually refer to them in  
19 General Sessions as "victims." So the victims would  
20 have been the, quote, patients?

21 MR. HUMPHRIES: But there was no testimony --

22 THE COURT: Kristy S. and Alexandria C. --

23 MR. HUMPHRIES: There was no testimony from the  
24 State, from any of those people, to indicate that they  
25 received a prescription and records were not kept.

1 THE COURT: There was testimony by the pharmacist  
2 that did fulfill prescriptions for those.

3 MR. HUMPHRIES: No question. No question that  
4 prescriptions were given and they were transferred to  
5 the pharmacy, and those prescriptions were given. No  
6 question about that. But there was no testimony from  
7 either of the patients that in prescribing that  
8 medication, that my client didn't conduct an  
9 evaluation of them, an assessment, ask them the  
10 relevant questions. There was no testimony about  
11 that. The only thing that the State was able to  
12 produce, as far as evidence regarding records, is that  
13 at the time the inspector made a demand of my client  
14 to produce these records, he was at that time unable  
15 to produce them. There is no evidence that they did  
16 not exist. There can be an assumption, but it is  
17 purely an assumption. It doesn't rise to the level of  
18 evidence.

19 THE COURT: Isn't an assumption the same as an  
20 inference?

21 MR. HUMPHRIES: Assumption/inference, doesn't  
22 matter because at this point that is not evidence.

23 THE COURT: I'm just asking. Is that what you  
24 are talking about?

25 MR. HUMPHRIES: Yes, sir. It is one inference,

1 but there is just as likely an inference that my  
2 client -- his statement is absolutely accurate in  
3 that, yep, I did them, but I've since gone through a  
4 bitter divorce. I've not been able to collect much of  
5 my records. They have not been produced, although I  
6 asked for them, and we went through a flood at the  
7 same time. I don't know what is destroyed, but all I  
8 know is I can't produce them right now.

9 Having said all of that, I don't believe there  
10 was evidence sufficient on those two issues for this  
11 jury -- or the jury that heard the case to return  
12 verdicts of guilty because they had no reference to  
13 any authority that required my client to do it, and  
14 there is no evidence that he didn't do it, just that  
15 he wasn't able to produce them.

16 THE COURT: Very good.

17 Mr. Martin.

18 MR. MARTIN: Thank you, Your Honor. These types  
19 of motions, Judge, as you know, Your Honor can grant a  
20 new trial for the defendant when there is an utter  
21 absence of any evidence, whatsoever, to support the  
22 verdict. Mr. Humphries' own words were, well, the  
23 evidence wasn't sufficient. Well, that is not the  
24 standard. It is if there is no evidence, whatsoever,  
25 which kind of brings us to the whole Article 3

1 argument.

2       There was testimony on the stand by Investigator  
3 Strickland, by the three pharmacists who filled the  
4 prescriptions, by Dr. Collier (phonetic), who was at  
5 Grand Strand Medical Center, by the pharmacist who was  
6 at Grand Strand and by Sheridan Spoon, all which said  
7 there is regulations in place which require a  
8 practitioner, a doctor, someone who prescribes  
9 medicine, there are regulations in place that require  
10 them to produce, keep and maintain those records. He  
11 failed to do that. We heard that in an audio that was  
12 presented to the jury where the investigator tells the  
13 defendant point-blank, You have to have these records  
14 and you have to produce them to me, and of course he  
15 said the same thing on the stand.

16       I have a case, Your Honor, that I do think is  
17 relevant, and if I may approach, I'll bring your  
18 attention to Page 5, last paragraph. Mr. Humphries  
19 mentions that some of the things that may have been  
20 testified to or presented at trial does not fall  
21 within the scope of Article 3 specifically. Well,  
22 there is case law on point, Judge, which -- and we  
23 addressed all of this at trial, but it directs us and  
24 the Court to understand that we don't look at just one  
25 statute in mere isolation. We don't look at just one

1 article in mere isolation. We don't look at just one  
2 chapter by itself. We look at the statute and the  
3 policy and the intent of why the legislators did what  
4 they did. We look at that as a whole to understand.

5 When you look at Article 3-44-54-340, it says:  
6 Persons registered to manufacture, distribute or  
7 dispense controlled substances under this article  
8 shall keep records. They shall maintain those  
9 records, and do so in conformance with the  
10 recordkeeping and inventory requirements of federal  
11 law and with any additional rules the department  
12 issues; that would be DHEC.

13 So by the language of Article 3 alone, it allows  
14 us to go outside of the scope of Article 3 and find  
15 the DHEC regulations, which specifically state that a  
16 practitioner must maintain records, keep the records  
17 and produce the records. But even if we didn't have  
18 that section of Article 3, State v. Prince tell us we  
19 can still go to the DHEC regulation, which is the  
20 Medical Practice Act, which Investigator Strickland  
21 did refer to on the witness stand. The Medical  
22 Practice Act, that is where it says the practitioner  
23 must issue these drugs for a legitimate medical  
24 purpose and must be able to maintain and produce those  
25 records.

1           Your Honor, it's no different than, let's say,  
2           there is a DUI case involving death. A witness on the  
3           stand wouldn't necessarily cite a specific statute,  
4           but there are a lot of different code sections that  
5           come into play that may not fall specifically within  
6           the article that is indicted, but they mention a  
7           murder case. You don't get an investigator -- an  
8           investigator on the stand and specifically cite the  
9           statute that says you shouldn't kill someone, but they  
10          still talk about it.

11           So just because an investigator or pharmacist may  
12          have failed to specifically mention 44-53-390, it is  
13          listed in the indictment and there is testimony to  
14          support what is required. Just because Investigator  
15          Strickland may not have specifically mentioned each  
16          DHEC code that the defendant failed to abide by, he  
17          still said it is required, and he didn't do it.

18           So there is more than sufficient evidence for the  
19          jury to come back that the defendant was guilty, but  
20          certainly, at the very least, there is a smidge of  
21          evidence, which is all that is required, in order to  
22          -- for the jury to come back with that verdict.

23           Judge, I know I'm getting a little redundant  
24          because this is everything we kind of laid out at  
25          trial, but it seems pretty clear from the testimony,

1 from the witness stand, from the law that was debated  
2 in the presence of the jury -- outside of the presence  
3 of the jury, but in presence of Your Honor, that that  
4 standard was met, and we would ask that Your Honor  
5 uphold the guilty verdict.

6 Your Honor, I do believe that Ms. Walter would  
7 like to address the Court, if that's okay.

8 THE COURT: Sure.

9 MS. WALTER: Thank you. Your Honor, I did just  
10 want to address one thing that Mr. Humphries was  
11 saying, that there was no evidence that he had failed  
12 to maintain the records, but if we look at it piece by  
13 piece, and I wasn't there for the whole trial, but I  
14 prepared most of it, so Sheridan Spoon testified as to  
15 what the constraints Mr. Webb was under as the holder  
16 of a limited license. Dr. Collier testified as to  
17 what constraints he was under as both the holder of  
18 the limited license, but also as a member of the  
19 residency program, and I believe that Billy Davis also  
20 testified to that. He was the clinic manager.  
21 Essentially, what everyone testified to was that with  
22 -- as a resident, with the holder of a limited  
23 license, Mr. Webb was only allowed to prescribe  
24 medicine in two contexts: One, as part of the  
25 residency program, which would have been for

1 inpatients at Grand Strand Regional Medical Center, or  
2 in the clinical center at Grand Strand Primary Care.  
3 Those are the only two places that he was authorized  
4 to issue prescriptions.

5 THE COURT: Well, now, he wasn't charged with  
6 unauthorized prescribing medicine. He was -- and I  
7 read the charge, that even the defendant gave to me  
8 without objection, that he was charged with failure to  
9 produce.

10 MS. WALTER: Right. I'm getting there. But  
11 because those were the only two places that he was  
12 allowed to prescribe, if he had kept those records,  
13 and I think both Mr. Davis and Ms. Williams testified  
14 that had prescriptions been issued either to an  
15 inpatient or in the clinical setting, that Grand  
16 Strand would have a computerized record of it. That  
17 was the purpose for calling them as witnesses.  
18 Because, essentially, they are custodians of records  
19 and they are testifying that the absence of the record  
20 means that there was no record. So there is, in fact,  
21 evidence that the defendant did not keep the records,  
22 because had he kept the records as required, by both  
23 the rules of his residency program and the regulations  
24 of DHEC, they would have resided either at the Grand  
25 Strand pharmacy or the Grand Strand Primary Care



1 pharmacy. Thank you.

2 THE COURT: All right. Anything else,  
3 Mr. Martin? I'm doing sides.

4 MR. MARTIN: Nothing at this time to what  
5 Mr. Humphries has said.

6 THE COURT: So, in other words, that is your  
7 reply?

8 MR. MARTIN: Yes, Your Honor.

9 THE COURT: All right. Now, rebuttal.

10 MR. HUMPHRIES: Thank you, Judge. Yes, sir. All  
11 right. So let's start with the basic rule of  
12 statutory construction, and that is that the language  
13 of the statute that is strictly construed against the  
14 State. The statute that we're talking about, Section  
15 44-53-390(a)(4), it requires persons -- well, it  
16 requires this: It is unlawful for a person to  
17 knowingly and intentionally to furnish false or  
18 fraudulent material information in or omit any  
19 material information from any application, report or  
20 other document required to be kept or filed under this  
21 article -- that is their language, "this article" --  
22 or any record required to be kept by this article.

23 So when we're -- in reference to the State's  
24 authority, State versus Prince, when they are talking  
25 about looking at the statutes in broad scope, the law,

1 as it is drafted, specifically confines this offense  
2 to rules and regulations and statutes within this  
3 article. That is -- they have -- and you have to  
4 assume that they meant to confine this law or these  
5 requirements, to requirements within this article.  
6 That is a firm rule of statutory construction. They  
7 didn't have to limit it there, but they did. So that  
8 is strictly construed against the State.

9 So we have to find a requirement within this  
10 article that makes what my client did, allegedly,  
11 unlawful. The only section referred to from 390 is to  
12 refer back to 44-53-340, which is the same article.  
13 You know, just because it is in the book doesn't mean  
14 it is in the article. This is the only one that is  
15 relevant. Persons registered to manufacture,  
16 distribute or dispense controlled substances under  
17 this article shall keep records and maintain inventory  
18 of conformance with the recordkeeping and inventory  
19 requirements of, one, federal law -- about which there  
20 is no testimony -- and with any additional rules the  
21 department issues.

22 So here is what we've got. It either has to be  
23 contained in this article, it has to be a federal law,  
24 or it has to be a department rule. Our position is  
25 while there was testimony about, you know, if he

1 prescribed something for folks outside of the  
2 hospital, he shouldn't have done that. That was  
3 beyond his limited license and the medical board --  
4 violated a medical board, that is beyond his license.  
5 He is not charged with that. There is another venue  
6 to deal with that; trust me, he knows.

7 In this case, they have to be able to establish  
8 that there is some authority requiring him to maintain  
9 and produce these records related to the prescribing  
10 practices. And, again, and just to be clear, I didn't  
11 say an inference, I'm saying there is an absolute void  
12 of testimony pointing to any specific DHEC regulation  
13 which requires my client to produce those records in  
14 the evidence presented by the State. There was no  
15 reference to any particular statute, which the statute  
16 for which -- under which the indictment was drafted  
17 referenced. So there is an absolute void of testimony  
18 and evidence regarding any legal authority that  
19 requires my client to maintain and produce records.

20 THE COURT: Let's see if -- because what I'm  
21 looking at is the directed verdict motions and then  
22 the new trial motions based on the lack of any  
23 evidence that would sustain a conviction. Of course  
24 the Court is not concerned with the creditability or  
25 the weight of the evidence, but whether or not there

1 was any evidence.

2 MR. HUMPHRIES: Yes, sir.

3 THE COURT: And, first of all, it seems we were  
4 all there at one time or another, and there is no  
5 question -- and I use the term "victims" since it was  
6 an alleged crime, but the reason we have these laws  
7 and regulations is to protect patients from abuse --  
8 either voluntary abuse or whether it is an  
9 overreaching abuse. Anyway, they are victims under  
10 the criminal law, but none of the victims testified;  
11 is that correct?

12 MR. MARTIN: That's correct, but they are not  
13 required to.

14 THE COURT: Well, I'm just saying. You say they  
15 are not required, and I understand, but they were the  
16 ones who were the victims of the crime. I mean, each  
17 indictment alleged violation of the pertinent statutes  
18 as they related to -- I don't even.....

19 MR. MARTIN: In the State's opinion, the State is  
20 actually the victim; they are merely witnesses. The  
21 prescriptions were written for them, and the law is  
22 written to protect them; there is no doubt about that.  
23 But in the specific charge, it is the State's belief  
24 that the State is the victim.

25 THE COURT: Well, was the State there at the time

1     that the prescriptions were prescribed?

2           MR. MARTIN:   Your Honor, my understanding is that  
3     the State, in theory, is always there.

4           THE COURT:    But the victims were, wouldn't they  
5     be the ones -- is there any reason why they would not  
6     -- I noticed that they were not even on the witness  
7     list.

8           MR. MARTIN:   That is correct, Your Honor.   That  
9     was -- honestly, sort of --

10          THE COURT:    Why don't you consult with your  
11     co-counsel.

12          MS. WALTER:   No, Your Honor --

13          THE COURT:    No.   Excuse me.   Once I recognize an  
14     attorney, you either wait until he is finished, or --  
15     we don't double team the other side.   You can consult  
16     with her, but let's hear what -- just from one.

17          MR. MARTIN:   Judge -- and what she was going to  
18     say is exactly what I was going to say.   It was a  
19     strategic decision.   It was to -- we wanted to leave  
20     out some bias that may have existed.   There were some  
21     things that even Mr. Humphries made in pretrial that  
22     we were not allowed to get into.   It was a strategic  
23     decision, and it was one that we made, Your Honor.  
24     That is pretty much what it is.

25          THE COURT:    So you eliminated the three witnesses

1 on each indictment that would have had personal  
2 knowledge, whether or not those records were actually  
3 produced?

4 MR. MARTIN: One of them -- we would argue that,  
5 number one --

6 THE COURT: You can answer the question and then  
7 give me the reasoning for it.

8 Is that not correct? They were the three  
9 witnesses that would have been able to testify what,  
10 if any, records were produced at the time they  
11 requested prescriptions?

12 MR. MARTIN: Not necessarily. We were able to  
13 attack that.

14 THE COURT: Who else was there at the time?

15 MR. MARTIN: The doctor was there, Judge.

16 THE COURT: And he testified each time that he  
17 produced -- I mean he maintained records.

18 MR. MARTIN: He did not testify, Your Honor. He  
19 did not testify.

20 THE COURT: I think he did.

21 MR. MARTIN: Your Honor, I don't believe he took  
22 the stand. The defense --

23 THE COURT: Oh, no, I think -- and that is why I  
24 was curious about the audio that was introduced by  
25 agreement, the stipulation of Investigator Strickland,

1 interview of the defendant in Hartsville as  
2 admissible, that was by agreement. I think it was the  
3 State's proffer; was it not?

4 MR. MARTIN: State's evidence.

5 THE COURT: Yeah, that's what I mean. So you  
6 would have to stand by what was in that.

7 MR. MARTIN: It would be admissible, not  
8 necessarily credible.

9 THE COURT: You mean the State would produce an  
10 incredible witness?

11 MR. MARTIN: Judge, I'm going to --

12 THE COURT: If you are going to sit down, fine,  
13 but now don't get back up.

14 MR. MARTIN: I'm done, Judge.

15 THE COURT: Yes, ma'am.

16 MS. WALTER: Your Honor, the stipulation was that  
17 the statement by the defendant was legally admissible;  
18 in other words, that had we had a Jackson v. Denno  
19 hearing, the State had met all of the requirements to  
20 show that the defendant's statement was given  
21 knowingly, intelligently and voluntary, absent any  
22 force or coercion by Inspector Strickland. When the  
23 State admits a defendant's statement, it by no means  
24 is saying that the State agrees that the defendant is  
25 telling the truth in everything he says. In fact, I

1 would say that more often than not we are saying,  
2 well, here is what the defendant is saying, and here  
3 is why you shouldn't believe it.

4 Going to Your Honor's question about who was  
5 there, I picture -- when I go to a doctor, I might  
6 talk to the doctor in the exam room. I don't sit  
7 there and see her making notes. I don't see her  
8 making an entry into the --

9 THE COURT: But you might talk to the doctor, and  
10 the doctor asks certain questions that these  
11 requirements are meant to answer.

12 MS. WALTER: The requirements are that he  
13 maintain and produce records.

14 THE COURT: You talk to the doctor about what the  
15 doctor needs to put in those notes?

16 MS. WALTER: But the regulations require that the  
17 doctor --

18 THE COURT: I didn't ask you that. I'm just  
19 asking you to answer my question, and then you can  
20 explain your answer.

21 MS. WALTER: Yes, there are times that I talk to  
22 the doctor about many things. Yes, some of those  
23 would go to what would be --

24 THE COURT: Well, does the doctor ask you  
25 impertinent questions?



1 MS. WALTER: Sometimes.

2 THE COURT: And do you think that is required by  
3 the law to be maintained?

4 MS. WALTER: No, but I have no knowledge --

5 THE COURT: Well, then, does he or she ask you  
6 pertinent questions?

7 MS. WALTER: Yes, the doctors ask pertinent  
8 questions.

9 THE COURT: And do you know when he does that?

10 MS. WALTER: Yes.

11 THE COURT: All right. So then do you have  
12 knowledge that at least the questions were asked?

13 MS. WALTER: I do have knowledge that --

14 THE COURT: All right. Well, that was my only  
15 question. These victims would have had knowledge as  
16 to what questions were asked, if any.

17 MS. WALTER: That is correct.

18 THE COURT: They could say, no, they didn't ask  
19 any; in fact, he came to me and said would you like  
20 something. I mean, that would have been a very  
21 pertinent sort of question as to whether or not he  
22 received information to go into those questions -- I  
23 mean go into those records, but you all see fit to  
24 produce them.

25 MS. WALTER: Well, Your Honor, one of the issues

1 was that --

2 THE COURT: Let me ask you: Then you did not see  
3 fit to produce them?

4 MS. WALTER: That is correct. It was a --

5 THE COURT: All right. Then why, which is a  
6 question I never asked as an attorney, but as a judge  
7 I'm trying to get a full picture.

8 MS. WALTER: Absolutely. Your Honor, the three  
9 individuals named in the indictments were the  
10 defendant's, I believe, now ex-wife, his step-daughter  
11 and a friend of the ex-wife. Clearly, had the State  
12 called those witnesses, there would have been plenty  
13 of fodder to attack them for bias. In fact, I believe  
14 in a family court case, and I won't get into the  
15 specifics, but there were some allegations by the  
16 step-daughter towards the defendant.

17 The State believed that there would be a much  
18 cleaner trial because, quite frankly, I understand  
19 that a patient will often give the doctor information  
20 that would be pertinent for the records, but the  
21 regulation does not speak to that. The regulation  
22 speaks to the doctor's requirement of maintaining  
23 those records and being able to produce them. A  
24 doctor could talk to me all day long. I could give  
25 them all of the information pertinent to my situation,

1 but if they don't maintain the record, they have  
2 violated the statute. It doesn't matter what they  
3 asked me. Conversely, they might never ask me a  
4 question. Maybe they come in and see a gash on my  
5 forehead and they don't talk to me at all. I've had  
6 doctors say I make it a practice never to speak to my  
7 patients. They come in, see a gash on my forehead,  
8 stitch it up, bandage it up and I get a prescription.

9 THE COURT: Even though you were in there for a  
10 broken toe?

11 MS. WALTER: That could happen. It is not about  
12 the asking of the questions; it is about the  
13 maintenance of the records. And while, yes, these  
14 rules and regulations are meant to protect the  
15 individuals named in the indictment, they are actually  
16 in place to protect society as a whole.

17 THE COURT: All right. So you would do it to  
18 protect everybody? I can understand that's the  
19 reason. You did not put the one fact witnesses that  
20 knew what occurred when the records were supposed to  
21 be produced.

22 MS. WALTER: No, and I think we're just talking  
23 about a little more of a temporal argument, because  
24 they might have had knowledge of what questions the  
25 defendant did or did not ask them, but that does not

1 mean that they had knowledge about whether the  
2 defendant did or did not maintain records.

3 THE COURT: That's just it, but you wouldn't have  
4 any records to maintain if he didn't ask the  
5 questions.

6 Anything else?

7 MS. WALTER: No, Your Honor.

8 THE COURT: Let be sure, because as I say, I had  
9 to use my notes to find out what -- the evidence that  
10 the jury heard from the witnesses, and then of course  
11 by the stipulated audio entity.

12 Now, one, do you have any question about the  
13 creditability of the inspector who is in that audio?  
14 I mean, no one needed to give him Jackson v. Denno  
15 advice before he participated in the recording. I  
16 think he had the recording; did he not?

17 MS. WALTER: That is correct.

18 THE COURT: So it would not question his  
19 creditability?

20 MS. WALTER: That is correct.

21 THE COURT: All right. The reason I have been  
22 very careful about that, because as far as testimony,  
23 be it credible or not, it is replete in the audio, and  
24 so far I think you do agree that he did maintain  
25 records; he just didn't produce the records.

1 MS. WALTER: If I may, the State agrees that that  
2 is what he said.

3 THE COURT: Exactly. That is exactly what I  
4 mean. That is the only evidence they had that he  
5 maintained records, is his statement?

6 MS. WALTER: This is correct. We are just not  
7 agreeing --

8 THE COURT: But you have no evidence that he  
9 didn't?

10 MS. WALTER: Yes, we do.

11 THE COURT: Except he did not produce them.

12 MS. WALTER: The evidence, again, Your Honor, is  
13 the absence of records in the two places where it  
14 would have resided: Either at Grand Strand within the  
15 inpatient pharmacy, or at the primary care clinic in  
16 their computer records.

17 THE COURT: All right. And, of course, this  
18 could be established, or at least in review of the  
19 transcript, because I think the audio is part of the  
20 transcript; is it not?

21 MR. HUMPHRIES: It is.

22 THE COURT: I find this statement in my notes,  
23 and I'll stand by the transcript, the defendant in  
24 response to a question about the records -- allegedly  
25 in Hartsville -- the inspector says -- the defendant

1       says: Ask any people that I saw that I documented --  
2       meaning the treatment, I guess.

3             And the inspector says: Well, I'll give you the  
4       first shot.

5             I think that is right after the statement about  
6       the divorce.

7             Yes, let's get them in Hartsville.

8             Defendant: They do exist; I can't get them.

9       Going through the divorce, wife bagged --

10            If not in Hartsville, where would they be?

11            Ask any people that I saw, that I documented it.

12            And then the inspector says: I'll give you the  
13       first shot.

14            Then the inspector says: The burden is on you to  
15       produce those records. If not in Hartsville, I'll  
16       assist you as much as I can.

17            And then later he says: This is the deal, if  
18       she, Christy, threw them away, it is on you.

19            One statement that concerns me is: The burden is  
20       on you to produce those records. Is that the State's  
21       position?

22            MS. WALTER: Your Honor, from the DHEC point of  
23       view, yes, it is the doctor's point of view. If I may  
24       make one other point?

25            THE COURT: Certainly.

1 MS. WALTER: Your Honor, the statute reads that  
2 the defendant shall keep records, and we talk about  
3 maintaining records, and maintain doesn't -- it  
4 doesn't mean I make a record and then throw it out or  
5 don't keep track of it. Maintain means to keep in an  
6 existing state so that it is capable of production  
7 upon request. I think certainly there is an abundance  
8 of evidence in the record that the defendant did not  
9 maintain the records, because had he maintained them,  
10 he would have been able to produce them.

11 So, no, he did not have a burden in the criminal  
12 trial to produce them. He had a burden for DHEC and  
13 licensing purposes to produce them for them.

14 THE COURT: Where did this statement come in?  
15 Was it a criminal trial, or was it a proceeding before  
16 the Board of Medical Examiners?

17 MS. WALTER: It was an interview before charges  
18 were filed and before --

19 THE COURT: It was introduced in a criminal trial  
20 by the State?

21 MS. WALTER: Yes. As Your Honor noted, by  
22 consent of both parties, yes.

23 THE COURT: Well, you certainly wouldn't want to  
24 do something that was unconstitutional, would you?

25 MS. WALTER: No, Your Honor.

1           THE COURT: I think we are aware of the line of  
2 cases that says that you do not put the burden of  
3 proof on the defendant to even establish the absence  
4 of something; is that correct?

5           MS. WALTER: Yes, Your Honor; that is correct.

6           THE COURT: And since you are kind enough to  
7 provide me with State versus Prince, I would have to  
8 advise you that there is a habeas corpus proceeding in  
9 the United States versus Bruce Gray in the district  
10 court of South Carolina -- actually -- yeah, it was in  
11 the district court of South Carolina. There, a city  
12 official was charged with -- under a statute with  
13 embezzlement. The statute at the time read something  
14 to the effect of in trials under this section, upon  
15 production of evidence tending to prove that any such  
16 office or other person has received public funds and  
17 failed to account, therefore, as required by law,  
18 there shall arise a presumption that the funds  
19 received and unaccounted for have been fraudulently  
20 appropriated by such officer or person, and the burden  
21 of such state of the case shall rest upon such officer  
22 or person to show otherwise.

23           That statute actually went up in the 1930s to the  
24 United States Supreme Court and then affirmed. This  
25 trial took place in the '80s, and we had a city clerk



1 treasurer charged under the statute, and the trial  
2 judge did his best to avoid the presumption language  
3 and said to the effect the jury may conclude from that  
4 proof that the unaccounted funds had been fraudulently  
5 appropriated. This conclusion -- the instruction  
6 continued -- was permissible, quote, because under the  
7 law, a public officer has a duty to account for public  
8 funds coming into his possession; however, any  
9 inferences which can be drawn from a circumstance that  
10 can be rebutted by other evidence in the case, which  
11 shows that the conclusion or inference shouldn't be  
12 drawn from those circumstances.

13 In other words, the inference can be rebutted.  
14 There was a conviction in the trial court, and it went  
15 up -- not the United States Supreme Court, but the  
16 South Carolina Supreme Court, and they dismissed it  
17 under old Rule 23. You are all probably too young to  
18 remember Rule 23, but that is what I called the "rug  
19 rule." It said on appeal, if the case had no  
20 precedential value or error of law or fact, then there  
21 would be no written opinion, can be dismissed  
22 perfunctory.

23 MR. HUMPHRIES: Unfortunately, I remember.

24 THE COURT: Unfortunately, that case happened to  
25 be my case, and they actually granted me permission to

1     argue against the prior decision, being the United  
2     States Supreme Court case in the '30s, but after that,  
3     it was issued an order that said motion to argue  
4     against prior decision was unprovisionally granted,  
5     and dismissed it. But then I found out they had  
6     something called habeas corpus, and I brought it in  
7     the United States District Court and it went to Judge  
8     Wilkins, and there he found that it is reasonable, if  
9     not compelling, interpretation of the language, that  
10    the burden was on the defendant to produce evidence to  
11    rebut any adverse inference, which had arisen on the  
12    issue of fraudulent appropriation, which means failure  
13    to produce evidence that he could account for.  
14    Consequently, unless the defendant offered the jury  
15    evidence reducing a convincing non-criminal  
16    explanation for the missing funds, the crux of the  
17    offense, fraudulent appropriation of failure to do  
18    what the statute required, would be established by the  
19    inference in the absence of rebutting evidence. This  
20    shifted the burden of evidence and the burden of  
21    proof.

22           That case is W. Bruce Gray, Petitioner, versus  
23    William Lee, South Carolina Department of Corrections,  
24    854 F.2d 650, 1984. I do think that that is still the  
25    law. I think that -- of course, this is going a

1 little far afield, but there used to be a series on  
2 PBS, Rumpole of the Bailey, and Rumpole said the golden  
3 thread that goes through -- and of course his English  
4 common law is a presumption of innocence, and the  
5 charge many times is that the presumption of innocence  
6 of such strength that without any evidence, direct  
7 evidence, that the intent of the statute was not  
8 produced, then it would require an acquittal.

9 Here, the only evidence on the State -- on the  
10 defense part was introduced by the State with  
11 acquiescence by the defendant, and each time he said I  
12 took documented evidence, and no contrary evidence was  
13 produced that he didn't. So the whole case of the  
14 State relies on the absence of evidence, which meant  
15 that he had to produce, and that is the shifting of  
16 the burden of proof to the defendant.

17 MS. WALTER: May I address that point?

18 THE COURT: Certainly.

19 MS. WALTER: Your Honor, in fact, again, the  
20 State believes that when it produced evidence of lack  
21 of the records, that was the State carrying its  
22 burden.

23 THE COURT: That is what the state statute said,  
24 that if he cannot account for the absence -- account  
25 for the missing money, then he would be presumed to be

1 guilty of a crime.

2 MR. WATSON: And, if I may, I would also note  
3 that I consulted with Mr. Oskin, and he assureds me  
4 that he spoke in his opening about the State carries  
5 the burden. The burden always --

6 THE COURT: I just read what the jury had.

7 MS. WALTER: Sorry?

8 THE COURT: I read what the jury had, at least my  
9 notes. I stand by the transcript of the testimony,  
10 which would include verbatim what the stipulation was,  
11 the audio.

12 MS. WALTER: Right. But Your Honor also gave,  
13 I'm sure, an instruction at the end that the burden is  
14 on the State, and probably at the beginning, that the  
15 defendant doesn't have to produce any evidence,  
16 whatsoever, that the burden remains on the State. I  
17 think to focus on one statement --

18 THE COURT: Only thing is -- I listened very  
19 carefully, and you all seemed to agree that the only  
20 evidence that the defendant gave was that he created  
21 the documents.

22 MS. WALTER: No.

23 THE COURT: Did he ever deny doing it? Did he  
24 ever deny producing the necessary required documents?

25 MS. WALTER: The defendant didn't produce any

1 evidence --

2 THE COURT: Did he ever deny it?

3 MS. WALTER: No.

4 THE COURT: In fact, he said on more than one  
5 occasion -- again, I'll go to my notes, and I  
6 apologize.

7 The question was: You don't have documents of  
8 the interviews or information, I guess?

9 And the defendant's response was that every  
10 prescription I have written down. My i-phone went  
11 out. I didn't have them with me. I have never had a  
12 physician that had documents of all the patients.

13 Were there any written on -- outside Grand  
14 Strand?

15 Yes, but I made sure I documented every time. I  
16 wrote them down with my wife, with her, her family and  
17 with patients of mine. I have written for the  
18 hospital employees. After talking to them, called  
19 Alice -- called in -- called on from other physician  
20 statements, not a problem. Ask any people that I saw  
21 if I documented it.

22 In other words, that is what he invited, and of  
23 course the State didn't do that.

24 MS. WALTER: Well, if I can point out one part?

25 THE COURT: You can point out anything. Listen,

1 I'm struggling with the case. I really didn't realize  
2 what it was about until I read my notes.

3 MS. WALTER: Well, if I can highlight one portion  
4 of what Your Honor just read. In the statement, I do  
5 believe that at one point the defendant said something  
6 to the effect of I had records on my phone, but I lost  
7 my phone or my phone was destroyed, which that is --

8 THE COURT: That's an explanation why he was not  
9 able to produce it.

10 MS. WALTER: No, it is a violation, because the  
11 regulation --

12 THE COURT: That his phone was destroyed; that is  
13 a violation?

14 MS. WALTER: Technically, yes.

15 THE COURT: Whoa.

16 MS. WALTER: The regulation and the statute --

17 THE COURT: We don't have Act of God in the state  
18 government?

19 MS. WALTER: The State statute requires that the  
20 records be kept and maintained, that is why had the  
21 defendant done what he was required to do by law and  
22 by rules of his residency, the records would have been  
23 maintained at Grand Strand and it wouldn't matter if  
24 Godzilla came and took his phone, because they would  
25 exist in the computer programs. The fact of the

1 matter is --

2 THE COURT: And he had that burden to prove it?

3 MS. WALTER: No, Your Honor.

4 THE COURT: Oh, he didn't?

5 MS. WALTER: DHEC purposes, just for licensing  
6 purposes, yes, because that is not a criminal  
7 proceeding. The defendant had the burden to produce  
8 records.

9 THE COURT: This was not a regulatory proceeding.  
10 It was not an administrative law proceeding.

11 MS. WALTER: No, I'm talking about two different  
12 things.

13 THE COURT: We're talking about criminal law  
14 where the State always has the burden to prove it of  
15 all elements of a crime.

16 MS. WALTER: Absolutely. And the State proved  
17 the lack of records, because the records did not exist  
18 where they by law, by regulation, by rule of the  
19 residency program had to exist. In essence, in order  
20 for the State to carry its burden, we were required to  
21 prove a negative: The absence of the records. That  
22 is the only way the State can do it; the absence of  
23 records. Because, again, it is not making a note; it  
24 is keeping that note. It is maintaining that record.  
25 So the only way that the State can prove its case is

1 by showing an absence of the records as they should be  
2 kept, and the State did that in multiple ways, by  
3 having Billy Davis testify about the computer records  
4 at the clinical practice, by having Ms. Williams  
5 testify as to the records at Grand Strand Regional  
6 Medical Center. So that is the State carrying the  
7 burden of showing there are no records, and it was up  
8 to the jury to determine, which they did, that that  
9 proof of an absence of records meant that the  
10 defendant did not keep and maintain those records as  
11 he must. So it is not that --

12 THE COURT: I just read the statement of the  
13 investigating officer, and it said that the burden of  
14 proof is on the defendant.

15 MS. WALTER: But, Your Honor --

16 THE COURT: Again, the jury heard that.

17 MS. WALTER: Your Honor, I think that that is a  
18 leap to say that in a trial that stemmed three days,  
19 the jury is going to have that one phrase and say, oh,  
20 the burden shifted to the defendant. I would also  
21 note that I don't think that Mr. Humphries objected.  
22 Certainly, he was asked what redactions did he want to  
23 the statement --

24 THE COURT: I certainly wouldn't object if I was  
25 defending, if it is an improper statement of the law.



1 I certainly would want to be sure that -- that's what  
2 the State's case was based on.

3 MS. WALTER: You have to object in order to  
4 preserve an issue.

5 THE COURT: If he was successful, I probably  
6 would have granted his motion.

7 MS. WALTER: First of all, he didn't object when  
8 we asked him what redactions were to be made.

9 THE COURT: You proffered it.

10 MS. WALTER: Before we do that, we always consult  
11 with the defense attorney --

12 THE COURT: Again, forgive me, you can talk about  
13 what you did at lunch if you want to, but what I'm  
14 talking about is what is in the record, and what the  
15 jury had to reach their decision on. The only  
16 testimony from the State about whose burden it was to  
17 prove that they -- documents didn't exist, was on the  
18 defendant.

19 MS. WALTER: Well, the State would disagree.

20 THE COURT: I'm sorry. Again, it is the  
21 interpretation. I'm just asking. I'm just talking  
22 about -- not the legitimacy of the statement, because  
23 I don't think it is. Of course he is not a trained  
24 attorney. He should know -- he wouldn't know about  
25 shifting the burdens and all.

1 MS. WALTER: But, Your Honor, the fact remains  
2 that in order to have an issue on appeal, the  
3 defendant has to object at the time, because had  
4 Mr. Humphries objected at the time, Your Honor could  
5 -- and Your Honor was concerned about that statement,  
6 Your Honor could have issued a curative instruction.  
7 The fact that the defendant did not object means that  
8 that issue is not maintained for appeal or for a new  
9 trial or for any review. The State also maintains  
10 that one tiny statement in a three-day trial where  
11 Your Honor instructed the jury multiple times that the  
12 burden remains on the State, to say that the jury  
13 focused on that one statement to the exclusion of the  
14 law that Your Honor gave them, especially when they  
15 are instructed that they must follow your law as you  
16 give it, is simply unfair to the State, and there is  
17 no evidence in the record to support that the jury  
18 took that one little sentence in the middle of, I  
19 think it was, a 45-minute statement versus the law  
20 that Your Honor instructed them on.

21 MR. HUMPHRIES: Could I be recognized, Judge?

22 THE COURT: Only if they are done. She sat down,  
23 but I don't know if Mr. Martin is sitting down.

24 MR. MARTIN: We're good, Your Honor.

25 MR. HUMPHRIES: Two things, Judge, and I'll go

1 last first. Just to be clear about the shifting of  
2 the burden, clearly that statement was made by the  
3 inspector in the statement provided by my client,  
4 which was admitted into evidence by the State. That  
5 is not the last reference before the jury in the  
6 testimony in this case regarding whose burden it was.

7 In cross-examination, both direct and  
8 cross-examination of the inspector, he reiterated that  
9 it was on him. If he couldn't produce it, he was in  
10 violation of the statute. If he couldn't produce it,  
11 he was in violation of the statute; that was asked and  
12 answered many times, both in direct and cross.

13 Further, in closing from the State, they made  
14 reference to it again. So we're not talking about an  
15 isolated statement in the statement of the defendant  
16 at the very beginning of the case. These things were  
17 referred to throughout the trial. And, quite frankly,  
18 if you talked to Inspector Strickland today, he would  
19 tell you the same thing. He is still of that same  
20 opinion, that is the way it is.

21 Now, as to the argument that the State did  
22 produce evidence regarding the lack of records, those  
23 are -- she referred to the computer system at the  
24 hospital or at the practice. My client in his  
25 statement indicated that these prescriptions were done

1 outside of the hospital, outside of the practice and,  
2 therefore, they would not be included -- necessarily  
3 would not be included there. So if we're going to  
4 fuss about him doing it outside of his practice, that  
5 is fine. Let labor licensing and review deal with  
6 that; that is not a criminal matter, okay. That is  
7 something in reference to his license and his limited  
8 practice. But that is not evidence in this case of  
9 prescribing practices outside the hospital or the  
10 clinic. The fact that they don't exist at the  
11 hospital or clinic bears no relevance to whether or  
12 not he created records at the time he prescribed  
13 outside of his practice, because necessarily they  
14 would not be included at the hospital or the practice.  
15 So that is evidence of nothing as it relates to  
16 whether or not he created records outside of the  
17 practice.

18 THE COURT: All right. Anything in reply?

19 MS. WALTER: I think both side's arguments are  
20 clear, Your Honor.

21 THE COURT: Very good. If that concludes the  
22 discussion -- I am still concerned about this case. I  
23 accept responsibility for perhaps not recognizing  
24 things as I should have, at least in having addressed  
25 it at that time. So I'm going to do something rather

1 unusual. Rather than rule at this time, I'm going to  
2 ask for brief proposed orders. I think you'll  
3 understand where my real concern is, and since the  
4 defendant is the moving party on the motion for a new  
5 trial, I'm going to ask you to prepare a proposed  
6 order. How much time do you need?

7 MR. HUMPHRIES: So here is the thing, my son  
8 graduated from high school in June. In celebration of  
9 that, we're leaving tomorrow to go to Ireland, and  
10 we'll get back the 28<sup>th</sup>.

11 THE COURT: Then you'll be able to ruminate on  
12 all of the issues (laughing).

13 MR. HUMPHRIES: If you can do that over a pint of  
14 Guinness or two.

15 THE COURT: Would 30 days be enough?

16 MR. HUMPHRIES: Clearly sufficient, if that is  
17 all right.

18 MS. WALTER: My only concern is that because you  
19 are basing it on what was presented to the jury, the  
20 State would like a copy of the transcript. The State  
21 does not have one. I don't know if Mr. Humphries has  
22 one. I don't know if one is requested.

23 MR. HUMPHRIES: It has been requested by the  
24 defendant; has not been produced.

25 THE COURT: Will you share it?

1 MS. WALTER: We can't do that for the court  
2 reporter. They have to get paid by both sides.

3 THE COURT: I see that. It has been 25 years  
4 since I practiced law, and I really was sensitive to  
5 court reporters.

6 MS. WALTER: I've learned to never anger a court  
7 reporter.

8 THE COURT: Good advice. Good advice. In fact,  
9 they were the only friends I had because I was with  
10 the State, and when you go to little counties or  
11 anything representing the highway patrolman, the only  
12 friend I had was the court reporter, even the bailiffs  
13 were not receptive (laughing).

14 MS. WALTER: We'll communicate with  
15 Mr. Humphries.

16 THE COURT: Let's do that.

17 MS. WALTER: When he gets the transcript, we'll  
18 make arrangements to pay our share.

19 THE COURT: That's just it. Let's do that, and  
20 I'll leave that up to you. In fact, I look forward to  
21 a scheduling order that you all complete.

22 MR. HUMPHRIES: Certainly. If that is -- if that  
23 concludes that, we have one other matter that I would  
24 like to bring to the Court's attention. I assume the  
25 Horry County file is not here, and so I will tell the

1 Court I have filed a motion to amend the sentence.  
2 We've served it on the State. I'll hand up a copy to  
3 Your Honor, if it is appropriate.

4 THE COURT: That is for information. You'll  
5 file --

6 MR. HUMPHRIES: It has already been filed.

7 THE COURT: It is a stamped copy?

8 MR. HUMPHRIES: Yes, sir, it is. It is fairly  
9 straightforward.

10 THE COURT: What does the State say?

11 MR. HUMPHRIES: Well, I haven't.....

12 THE COURT: Okay. That will be in the order  
13 today, is that this hearing will continue upon  
14 presentation of proposed orders, and that will be  
15 dependent upon the transcript becoming available to  
16 both parties and the court reporter being  
17 compensated?

18 MR. HUMPHRIES: Very good, yes, sir.

19 THE COURT: And then depending on the outcome of  
20 the -- you want this?

21 MR. HUMPHRIES: Honestly, Judge, at this stage,  
22 just very briefly, just sort of set the stage, this  
23 really will not come into play until mid-August  
24 anyway. There is merely a request to eliminate the  
25 community service requirement of the sentence just

1 based, quite frankly, on logistics and him being able  
2 to maintain his job. He can't even start community  
3 service until he finishes his weekend time the middle  
4 to end of August. So we can hold this motion as long  
5 as we don't, you know, go too much further past  
6 August. What I'm saying is it is not time sensitive  
7 today.

8 THE COURT: In other words, it has been filed, so  
9 it is part of the record and hadn't been responded to?

10 MS. WALTER: We just received it last week, yes.

11 THE COURT: That's what I'm saying. You haven't  
12 had a chance to, so I'll keep that as part of the  
13 record in this case.

14 MS. WALTER: The State will file a written  
15 response.

16 THE COURT: Right. Yeah. At your --

17 MR. HUMPHRIES: We mailed one to your chambers.

18 THE COURT: Well, anyway, you will respond as you  
19 would.

20 MS. WALTER: Yes, Your Honor.

21 THE COURT: As I say, I'm more concerned about  
22 getting the underlying issues determined, and that is  
23 from the transcript. You should be back --

24 MR. HUMPHRIES: I'll be back by the 28<sup>th</sup>.

25 THE COURT: You should be back by then, and the



1 30 days would be from the time that you get the  
2 transcript.

3 MS. WALTER: I'll check on it in Mr. Humphries'  
4 absence. I'll speak with him, and I'll follow up with  
5 it while he's gone so it is ready and waiting for him  
6 when he returns.

7 THE COURT: Welcome home.

8 MS. WALTER: At your preference, typically in  
9 Horry we're required to file a Form 4 even if it is  
10 continued; do you want me to?

11 THE COURT: I would love for you to do that.  
12 Mr. Barry is my law clerk. He has five retired judges  
13 he's the law clerk for.

14 MR. HUMPHRIES: I was wondering who would get  
15 that job.

16 THE COURT: So his service ends as soon as I'm  
17 clear, so send it to me. It is in the book.

18 MS. WALTER: I'll do that, Your Honor. The State  
19 will prepare a proposed Form 4 continuing the motion.

20 MR. HUMPHRIES: If that is what it is, you don't  
21 have to run it by me, if it is just to continue it.

22 THE COURT: Very good. If you don't mind, would  
23 you put the other milestones or whatever, transcript,  
24 30 days, all of that?

25 MS. WALTER: Yes.

1           THE COURT: In other words, make it a modified  
2 scheduling order.

3           MS. WALTER: It will be a complete Form 4.

4           THE COURT: Take your time, in other words.

5           MR. HUMPHRIES: And include the motion to amend  
6 sentence as being continued at the same time.

7           MS. WALTER: Yes.

8           THE COURT: Very good. Ladies and gentlemen,  
9 thank you for your patience.

10           (Whereupon, the proceedings concluded.)  
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1  
2 CERTIFICATE OF REPORTER  
3

4 State of South Carolina)

5 County of Horry )  
6

7 I, Natalie Dahl, Official Court Reporter for the  
8 State of South Carolina, do hereby certify that the  
9 foregoing is a true, accurate Transcript of Record of  
10 the proceedings of the trial and the evidence  
11 introduced in the hearing of the above-captioned case,  
12 relative to appeal, in the Court of General Sessions  
13 for Horry County, South Carolina, on the 18th day of  
14 June, 2019.

15 I do further certify that I am neither of kin,  
16 counsel, nor interest to any party hereto.

17  
18 March 9, 2020  
19

20 \_\_\_\_\_  
21 Natalie Dahl, RPR

22 Court Reporter  
23  
24  
25

1 STATE OF SOUTH CAROLINA      **TRANSCRIPT OF RECORD**  
2 COUNTY OF HORRY      WARRANT NO.:2017A2610200646

3 **ORIGINAL**

4 -----

5 August 10, 2023

6 **BEFORE:** The Honorable Benjamin Culbertson

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8 STATE OF SOUTH CAROLINA,

9 Plaintiff,

10 vs.

11 JOHN ALEXANDER WEBB,

12 Defendant.

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14

15 APPEARANCES:

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17 Mary-Ellen Walter, Esq.  
18 Appearing for the Plaintiff/State.

19 Lacey Thompson, Esq.  
20 Laura Hiller, Esq.  
21 Appearing for the Defendants.

22

23 Official Court Reporter  
24 Natalie Dahl, RPR

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## I N D E X

### DEFENDANT'S EXHIBITS

#### MARKED/ADMITTED

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: State versus John Alexander Webb.  
The matter is before the Court concerning Warrants  
2017A2610200646, 648, and 649. This is the  
defendant's motion for a new trial.

Who is going to argue this on behalf of the  
defendant?

MS. THOMPSON: I am, Your Honor. Lacey  
Thompson for the defendant.

THE COURT: All right.

MS. THOMPSON: Just a moment. I have a lot  
of transcripts that I'm trying to lay out.

Thank you, Your Honor. Lacey Thompson, I  
represent the defendant here, John Webb.

Just for procedural purposes, Your Honor, I  
did not represent Mr. Webb at the trial level. At  
the trial level, he was represented by Fran  
Humphries.

Your Honor, on April 23, 2019, Mr. Webb was  
found guilty by a jury of 44-53-390(a)(4). That  
states that it is unlawful for a person knowingly  
or 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

1 article or any record required to be kept by this  
2 article.

3 After the jury came back with a guilty  
4 verdict, Mr. Humphries renewed a motion, his  
5 directed verdict motion. At that point, Judge  
6 Macaulay said he would give both parties ten days  
7 for any post-trial motions.

8 They had a full post-trial motion hearing,  
9 and there is a full transcript of that. At that  
10 hearing, Mr. Humphries moved for a new trial and  
11 what is -- and an order granting motion in arrest  
12 of verdict, essentially, asking the judge to stand  
13 in, as is my understanding, as the 13<sup>th</sup> juror and  
14 vacate the three convictions that the jury came  
15 back with.

16 At that time, they had a full hearing on the  
17 record. In essence of reading it, Your Honor, it  
18 sounds like it was also a directed verdict motion  
19 mixed with the motion in arrest of verdict.  
20 Regardless of that, the judge came back and he  
21 issued an eight-page order granting the motion in  
22 arrest of verdict.

23 He had many concerns that I'll get into,  
24 which is truly the basis for the new trial motion,  
25 but it lists out all of the concerns there and

1 vacated those verdicts.

2 At that point, the State properly timely  
3 appealed, and it went to the Court of Appeals. The  
4 Court of Appeals agreed with the State that the  
5 judge could not do that. He could not stand in as  
6 a 13<sup>th</sup> juror and vacate the jury's decision. So  
7 they have remanded it for the new trial motion,  
8 which was not heard. So that is what brings us  
9 here today, is to have a ruling on the new trial.  
10 In diving into all of that, and so I don't risk an  
11 ineffective assistance of counsel, Your Honor, I  
12 have to bring it to your attention.

13 Also, the renewed directed verdict motion  
14 technically wasn't ruled on either. It is brought  
15 up in the post-trial motion transcript.  
16 Mr. Humphries says he's there to move for a new  
17 trial and a motion in arrest of verdict. Then, two  
18 pages later, he says, in essence, we're here on the  
19 renewal of the directed verdict motion.

20 So just to preserve the record for myself in  
21 the appeal, I have to -- and moving forward, I'm  
22 asking you to rule on the judge's directed verdict  
23 motion because it technically was not ruled on.

24 THE COURT: How can I do that? I don't even  
25 know what evidence was presented.



1 MS. THOMPSON: That is also the problem for  
2 Your Honor in granting a motion for a new trial,  
3 because Judge Macaulay has now retired, so Your  
4 Honor is, essentially, standing in as the judge who  
5 was not there for the trial, but that is what has  
6 been remanded. We have been remanded for a new  
7 trial, on a trial I know Your Honor did not sit in.

8 THE COURT: When did the Court of Appeals  
9 issue its decision?

10 MS. WALTER: Filed February 15, 2023.

11 MS. THOMPSON: Yes. So in furthering that,  
12 to get into the grounds of the new trial -- and I'm  
13 sorry, Judge --

14 THE COURT: That's fine. That's fine.

15 MS. THOMPSON: So, essentially, the grounds  
16 that we have here today, Your Honor, is, one, the  
17 defendant's rights to a fair trial were violated in  
18 this case.

19 One thing that the judge brings up is burden  
20 shifting. So under this statute, Your Honor, they  
21 submitted to the jury another statute, and what  
22 that states is pursuant to 44-53-340, persons  
23 registered to manufacture, distribute, or dispense  
24 controlled substances under this article shall keep  
25 records and maintain inventories in conformance

1 with the record-keeping and inventory requirements  
2 of federal law with any additional rules that the  
3 department issues.

4         So what happened in this case, Your Honor, is  
5 Investigator Strickland -- I believe he is under  
6 DHEC, the drug bureau -- came to Mr. Webb and asked  
7 for three medical records for three patients that  
8 had prescriptions filled. Those patients, Your  
9 Honor, were his now ex-wife, a friend of his  
10 ex-wife, and his step-daughter at the time.

11         When he came to Mr. Webb for those, he was in  
12 the middle of a divorce. Essentially, that is  
13 based upon my understanding of -- if he could not  
14 produce those records, then under 44-53-390(a)(4),  
15 he's guilty of three felonies. If he doesn't  
16 produce records and maintain those records, then  
17 he's guilty of the statutes, Your Honor. So that  
18 is what led us here.

19         He did tell the investigator that he had  
20 them. The investigator said -- and this was in the  
21 trial transcript -- I'll help you as much as I can,  
22 where could they be. I think they went to  
23 Hartsville to try to find the records, but he said  
24 they could very well be at his home that he doesn't  
25 have access to.

1           So the essential basis of the allegations,  
2 basically, is if he didn't have these records that  
3 DHEC was requesting for these three patients -- and  
4 what Judge Macaulay was going through in the  
5 post-trial transcript is kind of the policy behind  
6 it, you know, if you are writing up a patient  
7 prescription, there should be a record of it  
8 because you need to ask their medical history, you  
9 need to diagnose them, and in that diagnosis, what  
10 led you to the prescription. There should be a  
11 record of that.

12           The problem with this case is, one, it is  
13 burden shifting, which violates Mr. Webb's rights  
14 to a fair trial. In the post-trial motion, the  
15 State did mention that that was not objected to,  
16 that that was not preserved in appeal, and it is  
17 taken as true, Your Honor. That further goes to  
18 the defendant not having a fair trial because he  
19 has the right to effective assistance of counsel.  
20 There was continuous burden shifting throughout the  
21 trial, mainly with Investigator Strickland.

22           So during cross examination, during the  
23 trial, Investigator Strickland is saying he didn't  
24 have the records, therefore, he's guilty of it.  
25 Mr. Humphries says, What if his house burned down,

1 is he in violation of the law? Technically  
2 speaking, yes.

3 He goes through that, and he asks about  
4 recreating the records, could he have done that,  
5 and the investigator said he is not a HIPAA expert.

6 One of the big issues that Judge Macaulay had  
7 when going through his notes -- and to point out to  
8 Your Honor -- in the post-trial motion, the judge  
9 pointed out and said he did not understand this  
10 case until he went back through his notes. He said  
11 there was a lot of things he didn't realize until  
12 he was going back through and looking over  
13 everything. He said, I really didn't realize what  
14 it was about until I read my notes, which was after  
15 the trial, Your Honor.

16 So with that being said, the continuous  
17 burden shifting, if it wasn't objected to, that is  
18 still grounds for new trial because he has the  
19 right to effective assistance of counsel, and that  
20 should have gone forward.

21 In the order that Judge Macaulay gave in  
22 trying to vacate these three convictions, he said,  
23 Moreover, the State is the arbiter of the  
24 investigation. Investigator Strickland is recorded  
25 telling the defendant -- and this all went to the

1 jury -- the burden is on you to produce those  
2 records. I'll assist you as much as I can.

3 Judge Macaulay says, The inference might be  
4 drawn by the jury that the burden was on the  
5 defendant to produce evidence to rebut any adverse  
6 inference, which had arisen out of the issues of  
7 fraudulent omissions of material information  
8 required to be kept. So that is one of the biggest  
9 issues with his rights to a fair trial.

10 In addition, Your Honor, another ground for a  
11 new trial, and also why we are asking for a  
12 directed verdict, is they didn't meet the required  
13 element to prove Mr. Webb guilty, and that's all as  
14 well in the eight-page order from Judge Macaulay.

15 So, essentially, my understanding is that  
16 Mr. Webb is required to keep these records of his  
17 patients. He has to keep them and maintain these  
18 records, and what they say is according to federal  
19 guidelines, DHEC regulations, and state guidelines.  
20 What the judge said is what are those guidelines?  
21 If you have the regulations that he's supposed to  
22 follow in maintaining and keeping records so  
23 Mr. Webb knows what he is supposed to do, what are  
24 they? Put them into evidence. The State didn't do  
25 that. The State never said DHEC regulation says if

1 records are lost, this is what Mr. Webb is supposed  
2 to have done. There is no DHEC regulation or  
3 federal that says these are what -- this is what is  
4 required of Mr. Webb as a prescribing doctor, as  
5 someone who can prescribe medications. This is  
6 what he's supposed to do as far as maintaining  
7 records. All they had was Investigator Strickland  
8 stating if he doesn't have the records when I ask  
9 for them, it has to be in a timely fashion -- is  
10 what I believe the statute said -- then you are  
11 guilty of a crime.

12 The State's view on that issue is that, at  
13 the time, Mr. Webb was a first-time (*sic*) resident.  
14 He was under a limited scope, and that,  
15 essentially, he had two places where he could have  
16 kept records because his license was limited. So  
17 the State's argument is that if they are not in  
18 those two places, then that is fraudulent. But  
19 that's not what happened here, Your Honor. The  
20 investigator comes to him. They don't see records  
21 for these three patients at these facilities, so  
22 they come to Mr. Webb and say, Okay, they are not  
23 here, so where are they at?

24 At that point, he states all of the places  
25 they could be, that he doesn't have access to. At

1 the time, he didn't have access to Grand Strand  
2 medical records -- and this was played for the  
3 jury -- if you don't have these records, it's on  
4 you. And that is another thing that the judge goes  
5 into, because there was no additional regulation  
6 and rules to the jury, they didn't know what was  
7 required of Mr. Webb when keeping these records.  
8 All they heard is if you don't have them, you are  
9 guilty.

10 Your Honor, I don't know what you would  
11 prefer, but I have a copy of the order, if I may  
12 approach?

13 THE COURT: Well, if you want me to look at  
14 it, but...

15 MS. THOMPSON: It's probably easier to  
16 follow.

17 THE COURT: This is the order that went up on  
18 appeal?

19 MS. THOMPSON: Yes, Your Honor, and would be  
20 grounds for a new trial. What I'm handing up, Your  
21 Honor, is the judge pointing out all of the errors  
22 he, himself, made, the errors he admittedly made in  
23 the trial. I believe these errors would have -- if  
24 worded as a directed verdict motion, I don't think  
25 we would be here today. I think if he had just

1 captioned it differently and said that the elements  
2 were not proven because they did not give the  
3 regulations and rules that the defendant should  
4 have followed, which is an essential element to get  
5 to the crime, but because the State didn't do that,  
6 then there is not enough to give to the jury.

7         So if the judge had ruled just as a directed  
8 verdict motion, I don't believe we would be here  
9 today. But because he stood in as a 13<sup>th</sup> juror  
10 and worded it this way, that is why we are back  
11 here and remanded for a new trial.

12         But, Your Honor, just to point out what I  
13 handed to you, he lists the findings of fact, eight  
14 reasons -- he goes through the findings of fact as  
15 to why he issues that. So his issues -- he says,  
16 You say he has to keep records, and he has to keep  
17 records pursuant to federal rules, DHEC rules, and  
18 state rules, but they never put into evidence what  
19 those rules are. They base it solely on  
20 Investigator Strickland saying he didn't follow the  
21 rules. Well, what are the rules? So a jury could  
22 not have found that element of the crime without  
23 knowing what the rules are for record-keeping.

24         And then, No. 8, as I have already read, it  
25 goes to the burden shifting.



1 THE COURT: What did Judge Macaulay charge  
2 the jury when he charged them with the law?

3 MS. THOMPSON: That is on Page 2, Your Honor.  
4 He said the jury was instructed -- that it is  
5 another thing -- knowingly and intentionally, is  
6 what he gave to the jury. And then in post-trial  
7 motions, he said there is no way the jury could  
8 have gotten to the conclusion that he knowingly or  
9 intentionally did this because, in fact, it is  
10 opposite.

11 The thing that Judge Macaulay points out in  
12 his transcript is that there was an audio recording  
13 entered into evidence, based upon stipulation of  
14 the parties, that Mr. Webb did have those records.  
15 He created them and treated them as patients.

16 I will say in my trial transcript that audio  
17 is not transcribed. I can only get from Judge  
18 Macaulay's notes what it says, but he said,  
19 essentially, that he would imagine they would be  
20 with his wife, could the investigator call his  
21 wife. He found a box of records he had when he  
22 worked in Florida. They were not in there. At the  
23 time, there was a computer. I believe the State  
24 had the laptop at the time. He didn't have access  
25 to the laptop, and he said that they could have

1 been there on the computer. But, basically,  
2 showing that he did not knowingly or intentionally  
3 omit anything. There is no evidence that he  
4 omitted anything. In fact, he is saying where the  
5 records could be, he just doesn't have access to  
6 them, which, again, turns into burden shifting.

7 With that, Your Honor -- I lost my train of  
8 thought. There is so much going on. But 22 times  
9 in the recording, from our knowledge of the  
10 recording, he says where he thinks the records  
11 could be. That was played to the jury.

12 Again, it does go to burden shifting in the  
13 recordings too, because he says if you have the  
14 records, I'll help you get them, but if you don't,  
15 you are guilty of a crime.

16 THE COURT: What is the distinction between  
17 that and a highway patrolman saying where is your  
18 driver's license?

19 MS. THOMPSON: Where is your driver's  
20 license?

21 THE COURT: Yeah. Where the defendant has to  
22 produce his driver's license or an inspector saying  
23 where is your business license?

24 MS. THOMPSON: Your Honor, I think that is  
25 because you are required when you are in your car

1 immediately to have a driver's license and to  
2 produce it, but the statute here is ambiguous. It  
3 says "in a timely fashion." I don't believe it  
4 says at what point he has to turn them over, and  
5 that was one thing Judge Macaulay said, Is there  
6 not an act of God in here? If records are  
7 destroyed, if all of these doctors are at a  
8 conference and DHEC comes and says, All right, for  
9 all of your patients, we need records. You haven't  
10 -- timely fashion is an hour to produce them or you  
11 are in violation of the law, that is burden  
12 shifting to say because you don't have it, you are  
13 guilty of a crime.

14 As it comes to a driver's license, I think  
15 there is many cases where I don't have it on me,  
16 but if they run and see you have a license, they  
17 let them go, even if it's not in your possession,  
18 because you do have a license. That is kept in a  
19 system.

20 He's not saying that they weren't kept. They  
21 did exist, but they just were not available when  
22 the investigator came to him. When he couldn't  
23 access them, he wasn't given a chance to recreate  
24 them to the best of his ability. He asked to  
25 recreate the records and send those to the patients

1 asking them if they had any amendments to them and  
2 send them back, and the investigator said -- I  
3 don't think the investigator would have taken that.  
4 That is when the act of God and Judge Macaulay's  
5 concerns came in with that.

6 Also, Judge Macaulay felt that the patient in  
7 this case would have been the victim of this crime.  
8 The State disagrees. The State feels that the  
9 State would have been the victim of this crime  
10 because they are looking at, well, doctors  
11 prescribing in practice and if it was criminal or  
12 not.

13 I think, essentially, the statute is designed  
14 so that doctors are not being legal drug dealers,  
15 writing prescriptions for opioids or whatever. I  
16 think that was the policy behind it. So I think  
17 that is where the State was coming from, they felt  
18 they were the victims.

19 Judge Macaulay disagreed. He said, well, if  
20 you felt that something was omitted from the  
21 records, something was fraudulent in these records  
22 that we don't have, why didn't you call the  
23 patients up? None of the three were complaining  
24 witnesses to say that he did not treat them. There  
25 was no evidence saying that he did not actually

1 have these three as patients, nor did he treat  
2 them. None of the three -- it was unclear if they  
3 were even subpoenaed or not. But the three  
4 patients, Judge Macaulay felt, would have been the  
5 victims for the State that could have testified,  
6 you know, Mr. Webb did not treat me, he never asked  
7 me any questions, he could not have created a  
8 record because he never got my medical history  
9 never did X, Y, Z. That was one of the things that  
10 Judge Macaulay had problems with as well and,  
11 furthermore, why he felt it was burden shifting.  
12 Because they did not meet that element to show that  
13 it was fraudulent and something was omitted,  
14 because they didn't have a patient there stating  
15 that he didn't treat me and just wrote this  
16 prescription, so there is no way he could have kept  
17 a record, as opposed to -- as Mr. Webb said -- I  
18 created a record. I treated these patients. I was  
19 allowed to do this.

20 You know, Mr. Humphries throughout says this  
21 is a licensing issue, not a criminal issue. I  
22 think with missing that element with being able to  
23 say what these record-keeping rules and regulations  
24 are for Mr. Webb to follow, that it's burden  
25 shifting and missing a key element of the crime.

1 THE COURT: All right. Thank you.

2 State's position?

3 MS. WALTER: Well, first, I'm trying to get  
4 some clarification because the only motion I was  
5 served with was a motion for a new trial, and now  
6 I'm hearing a motion for new trial, a motion for a  
7 renewed directed verdict, and a post-conviction  
8 relief because we're alleging ineffective  
9 assistance of counsel.

10 THE COURT: Well, we're just going on the  
11 motion for a new trial.

12 MS. WALTER: With that, and I'll try to  
13 follow along with the logic, but first of all, as  
14 to burden shifting, that was not raised at trial  
15 and, therefore, it is an inappropriate grounds for  
16 a new trial. I'm trying to follow Ms. Thompson's  
17 arguments, so I might be a little bit scattered as  
18 well.

19 She indicated that perhaps we have a laptop.  
20 We've never had a laptop -- let me back up. This  
21 is what happened, Your Honor. I'll try to give you  
22 the layout of the law. The defendant was an intern  
23 at Grand Strand Medical Center. He also was  
24 permitted to practice at Primary Care. His license  
25 only allowed him to write prescriptions through his

1 work at those two practices. He was not permitted  
2 to write prescriptions outside of that practice.

3 There were a number of prescriptions  
4 identified where no records were produced. We  
5 focused on three of them. Investigator Strickland  
6 went to both practices where the defendant was  
7 permitted to write prescriptions, and the records  
8 did not exist there. He also went to the defendant  
9 and asked him for the records. The defendant could  
10 not produce them.

11 Investigator Strickland went to numerous  
12 locations where the defendant said they might  
13 exist, tried to determine whether there were any  
14 police reports filed to show that they had somehow  
15 disappeared. No police reports had been filed.

16 The burden is on the defendant through the  
17 statutes. And there was evidence at trial -- so,  
18 essentially, as Ms. Thompson said -- and I'm going  
19 to shrink it down -- the issue was that the  
20 defendant omitted material information that was  
21 required to be kept or filed under this article  
22 because there was no record of this doctor/patient  
23 relationship, which must exist for a prescription  
24 to be written.

25 Within that same article, it says that anyone

1 licensed must keep, shall keep, records and  
2 inventories in conformance with the record-keeping  
3 and inventory requirements of federal law and with  
4 any additional rules that the department issues.

5 Agent Strickland testified at trial that the  
6 physician is required to keep records -- and for  
7 the record, this is Page 165 of the trial  
8 transcript -- required to keep records as well of  
9 what they have documented as far as a  
10 patient/practitioner relationship and where they  
11 see the patient, how they see the patient, what the  
12 history is with the patient, and going forward with  
13 the prescribing of that patient should be.

14 So that was certainly enough to give the jury  
15 the essence of what the defendant was charged with.

16 As to whether it was in a timely fashion and  
17 Ms. Thompson's argument that, well, if I produce --  
18 Your Honor brought up what if you are stopped and  
19 asked for your registration and you don't have it,  
20 and she said, well, if you produce it later, it  
21 goes away. Well, we are here four years later and  
22 the records still have not been produced, so I  
23 think that argument falls to the wayside.

24 The fact of the matter is the defendant was  
25 required to keep records of a doctor/patient



1 relationship. He did not do that. The law was  
2 clearly laid out in front of the jury, and a jury  
3 convicted him of these three charges. And, quite  
4 frankly, there are no grounds for a new trial.

5 THE COURT: Anything in reply?

6 MS. THOMPSON: Yes, Your Honor. As far as  
7 the State's argument that because of his license at  
8 the time he could only prescribe in two separate  
9 places, and I think that's one of the problems  
10 here. Where is the rules and the regulations --  
11 where is the code that would go with that to tell  
12 the jury that because he is limited in this, he  
13 could only go to these places? Here is the rules  
14 for record-keeping. If he had been prescribing out  
15 of his scope, he only would have been allowed to  
16 give prescriptions in these two places, and because  
17 he didn't, and it was outside of that, he's in  
18 violation of the records code where he is supposed  
19 to keep all of this, and then it goes back to what  
20 he's actually charged under. I think that is one  
21 of the essential problems in the case, because  
22 those regulations and rules for which he was  
23 supposed to have followed are not there.

24 I think that also goes back to what  
25 Mr. Humphries said throughout in his theory in

1 going through this, that this is a licensing issue.  
2 I've been trying to read the DHEC rules and  
3 regulations as far as record-keeping. It's several  
4 pages saying this person has to keep that,  
5 pharmacists have to do this differently. So I'm  
6 trying to find the rules and regulations that  
7 should have gone to the jury, and it is hard to  
8 find because this is a licensing issue to begin  
9 with.

10 THE COURT: You are saying it is not a  
11 criminal statute?

12 MS. THOMPSON: To make it a crime, I think  
13 you have to follow the federal DHEC and state  
14 rules, and if he's not following those in  
15 record-keeping, then it would be criminal if he  
16 knowingly and intentionally did that. So that is  
17 what it takes to get to the criminal statute, and I  
18 think that is what I was getting at with that  
19 issue.

20 In going to that, too, Your Honor, there is a  
21 supreme court case, *Ruan versus United States*, and  
22 it talks about prescribing powers within doctors  
23 and criminalizing when they can prescribe and not.

24 In citing that case, it says, "First, as a  
25 general matter, our criminal law seeks to punish

1 the 'vicious wheel.' With few exceptions,  
2 wrongdoing must be conscious to be criminal. They  
3 must possess a culpable mental state."

4 I think that is what Judge Macaulay was doing  
5 in his eight-page order, showing the errors that  
6 he, himself, made in law. It is going back to that  
7 knowingly or intentionally. There was no evidence  
8 there, because they could not knowingly or  
9 intentionally found that he furnished false or  
10 fraudulent material or omitted it under this  
11 article or any record required to be kept by this  
12 article without knowing what records he was  
13 supposed to have kept. The jury would have needed  
14 to know those things before coming to a decision of  
15 knowingly and intentionally.

16 As far as producing the records, Your Honor,  
17 that was brought up in trial as to whether or not  
18 he could or could not have recreated the records.  
19 To my knowledge, I believe Investigator Strickland  
20 was saying that that would not have been acceptable  
21 to recreate the records, but I know he goes back  
22 and says that he might have taken that under  
23 consideration. So that kind of goes back and forth  
24 on that.

25 Court's indulgence for a moment.

1 (A brief pause in the proceedings.)

2 MS. THOMPSON: To close, I go back to our  
3 original grounds. I know the State was confused  
4 because of the ineffective assistance of counsel.  
5 This is a different scenario where we have a full  
6 trial transcript so, in my opinion, if you can get  
7 a new trial with the defendant's rights to a fair  
8 trial being violated, that is why I bring that up,  
9 because if the burden shifting wasn't preserved,  
10 that would be ineffective assistance of counsel,  
11 which would violate my client's right to a fair  
12 trial.

13 The burden shifting violates his right to a  
14 fair trial. If a defendant's rights are violated  
15 to a fair trial, that would get us -- we would ask  
16 for a new trial based on that.

17 Second, the mistakes of law that were made,  
18 the elements were not met. As I passed up to Your  
19 Honor, the judge even saw fit to try to correct his  
20 mistakes so much that he wrote an entire order  
21 pointing it out.

22 I know it's hard for Your Honor to make those  
23 decisions when you are not the judge on the trial  
24 case, but we stand by Judge Macaulay's order in the  
25 errors in the trial that were made and ask for a

1 new trial for Mr. Webb.

2 MS. WALTER: Does Your Honor need further  
3 response from the State?

4 THE COURT: No.

5 I'm going to deny the motion. I don't know  
6 that requiring a defendant to produce records that  
7 are mandated by state law is burden shifting. I  
8 mean, we are required to have driver's licenses,  
9 proof of insurance. You know, everybody has to  
10 maintain records depending on the businesses that  
11 they are in and requiring them to produce them,  
12 when the state law mandates that, I don't think  
13 that is burden shifting, so I'll deny your motion.

14 MS. THOMPSON: Your Honor, as to the ruling  
15 on the errors of law --

16 THE COURT: I don't know. I just don't know  
17 if there is any errors of law or not. I don't know  
18 what transpired. I don't -- what is the error of  
19 law?

20 MS. THOMPSON: Not meeting the elements of  
21 the crime. The judge points that out with --

22 THE COURT: So you are saying that the State  
23 had an obligation to produce every DHEC regulation  
24 that dealt with maintaining records?

25 MS. THOMPSON: They would have to introduce

1 the DHEC, federal, or state regulation for the  
2 maintenance of the records and what is he required  
3 to keep, maintain, and produce.

4 THE COURT: I don't think that is required,  
5 no.

6 MS. THOMPSON: All right. I just needed your  
7 ruling. Thank you.

8 (The proceedings concluded. The following  
9 was had after the afternoon docket concluded.)

10 MR. HOLFORD: Your Honor, let's go back on  
11 State versus John Webb.

12 MR. THOMPSON: We're asking to make exhibits  
13 from the order that I presented during the hearing,  
14 and the transcript from the post-trial hearing, and  
15 the trial transcript that I referred to, and I  
16 believe the State had no objection to adding these  
17 exhibits.

18 MR. HOLFORD: That's correct, no objection to  
19 them being exhibits.

20 THE COURT: All right. We'll put that in as  
21 Defendant's Exhibit 1?

22 MR. THOMPSON: Just to keep it clean, Your  
23 Honor, let's do the order --

24 THE COURT: Come on up here and let the court  
25 reporter mark them.

1 (Defendant's Exhibits 1-3 marked.)

2 MR. THOMPSON: I have Defendant's 1, the  
3 order granting the motion on arrest of verdict;  
4 No. 2 as the post-trial hearing transcript; and 3  
5 is the trial transcript.

6 THE COURT: All right. These are admitted  
7 without objection?

8 MR. HOLFORD: Yes, Your Honor.

9 THE COURT: Defendant's Exhibits 1, 2, and 3  
10 are admitted into evidence without objection.

11 (Defendant's Exhibits 1-3 admitted.)

12 MR. THOMPSON: Sorry. My brain was working  
13 too fast this morning.

14 THE COURT: That's all right.

15 (Whereupon, the proceedings concluded.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## 1 CERTIFICATE OF REPORTER

2 State of South Carolina)

3 County of Horry )

4

5 I, Natalie Dahl, Official Court Reporter for

6 the State of South Carolina, do hereby certify that

7 the foregoing is a true, accurate, and complete

8 Transcript of Record of the proceedings had and

9 evidence introduced in the trial of the captioned

10 case, relative to appeal, in the Court of General

11 Sessions for Horry County, South Carolina, on the

12 10th day of August, 2023.

13 I do further certify that I am neither of

14 kin, counsel, nor interest to any party hereto.

15

16 August 28, 2023

17 *Natalie Dahl, RPR*

18 -----  
Natalie Dahl, RPR

19 Court Reporter

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23

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25



1 State of South Carolina ) **TRANSCRIPT OF RECORD**  
2 COUNTY OF HORRY ) CASE NO. : 2022-CP-26-0313

3 -----

4 September 21, 2023

5 **BEFORE:** The Honorable Benjamin Culbertson

6 -----

7 State of South Carolina, )  
8 Plaintiff, )  
9 vs. )  
10 John Alexander Webb, )  
11 Defendant. )

12 -----

13 APPEARANCES:

14 For the State of South Carolina:  
15 Mary-Ellen Walter, Esquire

16

17 For the Defendant:

18 Laura L. Hiller, Esquire  
19 Lacey Marie Thompson, Esquire

20

21

22

23

24

25

Julie A. Kevish  
Official Court Reporter

1 September 21, 2023

2 **P-R-O-C-E-E-D-I-N-G-S**

3 THE COURT: This is the State of South Carolina  
4 versus John Alexander Webb. The matter is before the Court  
5 regarding warrants 2017A2610200646, 648 and 649. This is the  
6 defendant's motion for reconsideration.

7 MS. THOMPSON: Yes, Your Honor, on the new trial.

8 THE COURT: And you're Ms. Thompson?

9 MS. THOMPSON: Yes, Your Honor, and I did do a  
10 written motion this time, I know I was everywhere the last  
11 time. Do you have a copy or would you like me to approach with  
12 a copy?

13 THE COURT: I'll need to see it, yes. Thank you.  
14 Alright, let me hear from you.

15 MS. THOMPSON: Thank you, Your Honor. We were before  
16 the Court, I think it was about a month ago for a motion for a  
17 new trial. We filed a motion for reconsideration in front of  
18 Your Honor mainly for two reasons. The first is, as I  
19 mentioned before, it's very unlikely to present a new trial  
20 motion in front of a judge that was not the original trial  
21 judge. It was my error, I did not enter the transcripts into  
22 the record until after the hearing was over. I have the  
23 transcripts again today for Your Honor if you would like to  
24 review anything before making a decision on a new trial motion  
25 in which you're not the presiding Judge, so that was the first

1 reason for asking for this motion to reconsider, because I  
2 would imagine in 30 minutes hearing about a case you didn't sit  
3 through a trial for, it would be really hard to navigate all  
4 the things that I'm trying to throw at the Court and explain in  
5 those arguments. So the second ground that we ask for  
6 reconsideration is during the prior motion the solicitor in  
7 this case brought up that our argument that Dr. Webb did or  
8 didn't recreate records or could have created alternate medical  
9 records, that he, you know, lost and could not access at the  
10 time was moot because in that hearing she said in the entire  
11 proceedings, pre-trial, trial, post-trial appeal and now post  
12 appeal, she said it stated that the defendant never produced  
13 the missing medical records making the recreation argument that  
14 we gave to Your Honor in burden-shifting moot. We are in  
15 possession of those medical records, Your Honor, that were  
16 recreated to the best of his ability through HIPAA guidelines.  
17 His trial attorney, Fran Humphries, did have those records  
18 while the case was pending. I'm not sure why they weren't not  
19 turned over to the investigator or the solicitor at the time,  
20 but since we've had the case it was our position that it would  
21 not be appropriate to turn these over until we got a new trial.  
22 If that was granted we intended to turn them over to the State.  
23 Now, however, since the solicitor made it a point to bring up  
24 that they still didn't have the records even to this day, we  
25 felt at that point, since she brought it up it was important

1 for the Court to note, and to now bring those records that the  
2 trial attorney had or however long and we have, as well, as I  
3 mentioned, we did not turn them over because they do contain  
4 personal information. Would Your Honor like to see those now  
5 or wait?

6 THE COURT: Go ahead and finish your argument.

7 MS. THOMPSON: Okay. Thank you, Your Honor. I'm  
8 going to skip over the procedural history. I know I went  
9 through all of that before and that is in the written motion on  
10 page two, and as far as the facts, I won't go through all the  
11 facts again. Just to highlight, Dr. Webb was at Grand Strand  
12 Regional Medical Center at the time of these allegations. He  
13 wrote prescriptions for his wife at the time, his step-daughter  
14 at the time, and a friend of his wife's at the time. An  
15 investigation later came up about prescribing practices. They  
16 asked him for the records for those three patients, and he did  
17 let the investigator know he did document it and he did do what  
18 he's supposed to as a physician in treating them as patients  
19 but that he did not have access to the records because he did  
20 not have access to his family home and he did not have access  
21 to his computer. He did have a home office, he was going  
22 through a divorce at the time, and he let them know that that  
23 is where he would typically keep any kind of records. He did  
24 state he had records at his home in Hartsville, and he did, he  
25 had a lot of records because he does make record when

1   prescribing and practicing. In those records he did not find  
2   these three patients, but stated, again, they would probably  
3   have been in his original family home or in his computer. In  
4   addition, the investigator stated that Dr. Webb never gave  
5   alternate documentation. He had plenty of time to do so, but  
6   he also states he was not allowed to recreate records. So  
7   going over again, Your Honor, as I stated before, the  
8   defendant's rights to a fair trial were violated due to the  
9   burden-shifting in this case. Through testimony of its  
10   witnesses and in closing arguments the State suggested that the  
11   burden of proof was always on the defendant. At the last  
12   hearing Your Honor posed two questions to me: He said, if  
13   you're required to have a license, you're required to carry  
14   insurance when driving a motor vehicle, you found it was not  
15   burden-shifting to require the defendant to have records for  
16   patients that he's treating. Your Honor, I do not have those  
17   statutes pulled in front of me. I probably should have pulled  
18   them up because I would have seen that the difference is  
19   extremely clear. In the statutes for both of those, Your  
20   Honor, it requires dismissal if the defendant shows they did  
21   have a license at the time of the violation and if that they  
22   had insurance.

23           THE COURT: But I mean, why is that not considered  
24   burden-shifting, but this one is? I mean, both of them require  
25   the defendant to produce records. I don't understand your

1     burden-shifting argument if forcing a defendant to show proof  
2     of insurance or forcing a defendant to show a driver's license,  
3     if that's not burden-shifting, why is this burden-shifting?

4             MS. THOMPSON:  It's not burden-shifting because the  
5     statute lays out that, a dismissal, that those cases must be  
6     dismissed if it was not an act.  So if I'm driving my car and I  
7     don't have a license and I did not go through the DMV to have a  
8     license, then that is me acting to drive criminally knowing I  
9     don't have a license.  If I had a license, and like my friend  
10    lost hers at the Gamecock game at Bank of America Stadium, and  
11    I looked up this up, I said, guess what, if you don't have a  
12    license you didn't know that you were going to lose yours at  
13    the football game, but since you lost it you're allowed to  
14    recreate it at the DMV, turn it over to the officer, and they  
15    have to dismiss it.  So that is why it was not burden-shifting  
16    is because it allows for them to show, like, this was not an  
17    act, an intentional act to drive without a license, I have a  
18    valid license, but it lays out a way for the driver to recreate  
19    it if it is lost or stolen, turn it over to show that it was  
20    not deliberately acting in violation of the law, they just did  
21    not have it, they lost it, it was stolen, and they're allowed  
22    to recreate it, and it forms a dismissal if that happens.

23            THE COURT:  Yeah, but you've the got law enforcement  
24    who's standing back saying, I don't have to do anything.  
25    Defendant, you've got to take the action, you've got to prove

1 to me that you have a license or that you have insurance.  
2 That's why I don't understand why you're saying that's not  
3 burden-shifting. I understand the charges get dismissed, but  
4 it still puts the burden on the defendant to get the charge  
5 dismissed through the defendant proving, I've got a license, or  
6 proving, I've got insurance. They still have -- it doesn't  
7 require law enforcement to disprove that, it requires the  
8 defendant to prove it by bringing forward the license or the  
9 proof of insurance.

10 MS. THOMPSON: And that ties into the second part of  
11 my argument, Your Honor, that I made the last time is, there  
12 were no rule or regulations, whereas we have rules and  
13 regulations on those recreating a driver's license and  
14 insurance, there's nothing here and the investigator  
15 contradicted himself in the audio played to the jury where they  
16 had a conversation with Dr. Webb and his trial attorney before  
17 charges were brought and before. He says I'm a reasonable  
18 investigator, I would have taken into consideration if he had  
19 recreated the records that were lost or stolen or whatever  
20 happened to them, but then again when he states that he also  
21 says at trial, well, he can't recreate records. And then I  
22 actually put that language in the motion, Your Honor -- Court's  
23 indulgence -- because that was brought up. Mr. Humphries asked  
24 if he had gone through HIPAA and recreated the records. Sorry,  
25 Your Honor, I was just reading it. It's on page six, I

1 apologize, Your Honor. It talks about what the law states,  
2 what the statutes state, and Investigator Strickland says: I  
3 can't speculate to that. He says what's the law on that?  
4 What's the statute on that? And that's the difference, Your  
5 Honor. In the statutes for license and insurance you have an  
6 answer. You have a clear legal answer on recreating documents  
7 that you're required to keep if they are lost or stolen. When  
8 asked the investigator about this incident, as well, him not  
9 having access to all of his records and documents, he says, I  
10 can't speculate. He can't speculate to what the law is, and it  
11 feels like you're guilty because I say you're guilty. What's  
12 the laws, what's the regulations that he's supposed to follow  
13 if things that are supposed to be within his possession are  
14 lost or stolen, so that goes into that second part is where the  
15 State did not introduce the DHEC regulations, federal laws,  
16 what is required of Mr. Webb for documentation and in  
17 processing it and keeping it. Again, the investigator says it  
18 has to be readily available, and we usually take that as one  
19 hour. Well, usually, what's the law, what's the statute? What  
20 is required of this doctor in keeping those documentations?  
21 What has to be in those documents when treating these patients?  
22 What is expected to keep? If they are lost and stolen, what is  
23 expected of him to stay in compliance? I don't have those  
24 answers because they were not introduced. It was just  
25 Investigator Strickland saying he didn't have them when I asked



1     for them so he's guilty of the crimes, and that was my point  
2     with burden-shifting, Your Honor, is with those things you can  
3     show that you did have them at the time. He could not show  
4     that he did have them at the time. He did not have access to  
5     it, and there was no remedy, according to the investigator, to  
6     correct that, so that is the burden-shifting, and going back  
7     into my argument, was not introducing the regulations in the  
8     law on what is required of a physician in keeping these  
9     documents. We don't even know where the one hour or less comes  
10    from because he says: However, the records have to be readily  
11    retrievable, which is defined as "usually" one hour, so the one  
12    hour, to my understanding, is a pharmacy rule, not a physician  
13    rule. I would like to know what the rule is for a physician  
14    because that wasn't introduced at trial. That wasn't given to  
15    the jury to know what readily retrievable means, and also, we  
16    don't even know how long he's supposed to keep records. He  
17    says typically the drug bureau requires two years, but  
18    Investigator Strickland didn't know what the Medical Board  
19    required or anybody else required, so we don't even have a time  
20    amount.

21               THE COURT: Excuse me for interrupting, but when the  
22    judge charged the jury at trial, what did he charge the jury?  
23    I mean, surely, if the jury found him guilty and that was based  
24    upon something that the judge charged to the jury, saying  
25    before you can find this defendant guilty, here's the law.

1 MS. HILLER: Yes, Your Honor. Your Honor, I don't  
2 mean to tag team, but this is maybe what I know a little  
3 better. My understanding is the judge charged the jury  
4 specifically only with a statute that says, you need to follow  
5 other rules and regulations, and the other rules and  
6 regulations were not entered in, so that was one of the issues.

7 THE COURT: Well, I mean, was that argued to the jury  
8 that how can you find that he's violated the statute when you  
9 don't know what the other issues are?

10 MS. HILLER: Your Honor, that's what the judge was  
11 arguing in the motion that he, you know, granted the motion  
12 notwithstanding, or to set aside the verdict. That's what he  
13 determined that was what had been argued by the attorneys in  
14 the post-trial motion, the first post-trial motion directly  
15 after the trial that the judge ruled was appropriate was that  
16 because there was not regulations entered, that was one of the  
17 reasons that the jury should not have found a guilty verdict.

18 THE COURT: I mean, my question is, is this something  
19 that the State has to introduce in their prosecution, or is  
20 this a law that the defense attorney should have said, Judge,  
21 in your charge to the jury you need to include this and you did  
22 not include this?

23 MS. HILLER: He did, Judge, that was addressed. My  
24 understanding is that was addressed.

25 THE COURT: The prosecuting attorney said, you need

1 to charge --

2 MS. HILLER: The prosecuting attorney did not pass  
3 anything else to be charged.

4 THE COURT: Not the prosecuting attorney, the defense  
5 attorney.

6 MS. HILLER: They wanted more -- they wanted a proof  
7 of what should have been charged. That was what was raised, I  
8 think, in trial, and definitely in the post-trial motion.

9 THE COURT: So what was the judge's decision when the  
10 defense attorney said you've got to charge them with the  
11 regulation?

12 MS. HILLER: At trial there was no ruling made, the  
13 case, they went with what they had, just that regulation.  
14 After trial the judge determined that he had not fully  
15 understood the issue and there should have been a regulation  
16 included.

17 THE COURT: So the defense attorney, prior to jury  
18 deliberations, the defense attorney said, Judge, you've got to  
19 charge them with this regulation in addition to this law --

20 MS. HILLER: I do believe that's true, Your Honor.

21 THE COURT: -- and the judge said, no, I'm not doing  
22 that?

23 MS. HILLER: And the directed verdict motion, that is  
24 what the defense attorney argued, yes.

25 THE COURT: I'm not talking about directed verdict,

1 I'm talking about when he charged the jury on the law to be  
2 applied for the jury to find this defendant guilty or not  
3 guilty, the judge says, before you find this defendant guilty  
4 you have to find that the State proved beyond a reasonable  
5 doubt, here's the law.

6 MS. HILLER: And they read the one law.

7 THE COURT: Did the defense attorney say, Judge,  
8 that's not the only law you have to charge the jury, you have  
9 to also charge them with this regulation?

10 MS. THOMPSON: Your Honor, if I may again, I'm sorry  
11 to --

12 THE COURT: Yes.

13 MS. THOMPSON: Because it was addressed in the  
14 directed verdict motion that is why it wasn't to the jury,  
15 because that was his point of directed verdict, is they did not  
16 introduce any additional regulations to follow, and then the  
17 judge --

18 THE COURT: But the State doesn't have to introduce  
19 regulations for them to follow. The State doesn't have to  
20 introduce the law on burglary first degree. The State  
21 prosecutes facts and then the judge says: Alright, jury, you  
22 find the facts. Did the State prove this beyond a reasonable  
23 doubt? Here is the law. You take the facts as you find the  
24 facts to be. You apply them to the law as I tell you what the  
25 law is. The State doesn't tell the jury what the law is, the

1 defense attorney doesn't tell the jury what the law is, the  
2 judge tells the jury what the law is. So the judge says, jury,  
3 you take the facts as you find them to be, you apply them to  
4 the law as I charge you on the law, and then based upon that  
5 you issue your verdict. So when the judge told the jury that,  
6 did defense counsel stand up and say, wait a minute, Judge, you  
7 have not given the jury the entire law?

8 MS. THOMPSON: He did not, Your Honor. The judge  
9 reverse himself, though, after in saying that he should have.

10 THE COURT: And then that went up on appeal?

11 MS. THOMPSON: Not that issue. The only issue on  
12 appeal was that he stood in as 13th juror, not the reasons why,  
13 not the errors of law. The only thing that was appealed is  
14 that a judge cannot stand in as a 13th juror and issue an order  
15 in arrest of verdict -- because that's a civil remedy and not a  
16 criminal remedy, that is the only thing the Court of Appeals  
17 decided was, Judge, you cannot issue this. If the title of  
18 that had just been granting the defense motion for directed  
19 verdict, Your Honor, I don't believe we would not be here.

20 THE COURT: I'm not talking about granting directed  
21 verdict, it went to the jury. It sounds to me as though your  
22 argument is not that it's burden-shifting, it's not that the  
23 judge stood in improperly as a 13th juror, it sounds to me like  
24 your argument is the judge should have charged the jury -- or  
25 did not charge the jury with all of the law that the jury

1     should have been charged with.

2                 MS. HILLER:  Our argument, Your Honor, is that the  
3     judge came forward after the trial and stated he did not  
4     understand the case and he made errors of law, and he issued an  
5     order addressing the mistakes he made, but he titled it:  
6     Motion in arrest of verdict judgment, and that went up on  
7     appeal and they said they could not do that, but he stated in  
8     his order all the mistakes of law that would have, in essence,  
9     granted, after the jury verdict, the renewed motion for a  
10    directed verdict.

11                THE COURT:  And none of that was argued on appeal?

12                MS. THOMPSON:  That was not argued on appeal.

13                THE COURT:  Why not?

14                MS. THOMPSON:  It was the State's appeal so the only  
15    issue they appealed was that, and that will be, I guess, an  
16    appellate issue should we not get a new trial, but that is why  
17    we are asking for a new trial because we know now the judge  
18    pointed out the mismakes of law that were done, and that why  
19    we're asking for a new trial now.

20                THE COURT:  What's the State's position?

21                MS. WALTER:  I'll try and be brief, Your Honor,  
22    because you hit on most of the points that I would have.  I  
23    don't believe the motion to reconsider should be granted.  
24    Going back to the hypotheticals that Your Honor raised last  
25    time and again today about a driver's license and insurance,

1 the hypothetical given by defense counsel is that the driver  
2 actually had a license but lost it. Here, the statute, and I  
3 can pass these up, Your Honor. At the time of these, not  
4 allegations, because they are now convictions, they are not  
5 allegations, the jury found Mr. Webb, not Dr. Webb, Mr. Webb,  
6 guilty of all three charges. So if you follow, Your Honor, the  
7 first regulation is, who is required to keep records, and the  
8 highlighted portion simply says that an individual practitioner  
9 must keep these records. Then the second stapled set kind of  
10 follows through with the argument. So Code 4453 290 says that  
11 anyone who prescribes must have a registration. Then again,  
12 with 4453 340, it talks about the recordkeeping and inventory  
13 requirements of federal law and with any additional rules the  
14 department issues. And then the last page, it was quite  
15 lengthy, it's a 56-page booklet, so I copied the front page and  
16 the relevant page. This is a drug enforcement administration  
17 practitioner's manual which talks about: Records have to be  
18 readily retrievable, and so the State's argument at trial,  
19 which clearly the jury understood and believed was that Mr.  
20 Webb had never had these records at all. So it's not that he  
21 lost them, it's that he did not have them, because if he had  
22 them they would need to be readily retrievable so that when  
23 DHEC approaches him he is able to produce them. So it's not  
24 recreating, it's that he never had them in the first place.  
25 And ahead, going with defense counsel's argument about, well,

1 if you're driving without a license it can be dismissed, if he  
2 had had these records, he never would have been indicted.  
3 There are certain, even more than driving, there are certain  
4 rules and regulations that lawyers and doctors have to follow  
5 because of the importance of our profession, and as a doctor  
6 prescribing controlled substances, you are required to keep  
7 records, and you are required to keep those records in such a  
8 fashion that when you are approached, whether it's by an agent  
9 of DHEC or the DEA or anyone else that you can say, here are  
10 the records: I had a doctor/patient relationship with Judge  
11 Culbertson. He came to see me on this date complaining of  
12 these issues. I prescribed him ten milligrams every other day  
13 of this particular drug. That is part of being a doctor. The  
14 fact that Mr. Webb did not keep those records is why he is no  
15 longer a doctor, it is why the jury convicted him, and we  
16 believe that this motion to reconsider should be denied.

17 THE COURT: Anything in reply?

18 MS. THOMPSON: Just briefly, Your Honor. As a  
19 doctor, he still is a doctor in the state that he lives in, I  
20 believe it's Missouri, so just briefly, that is why I refer to  
21 him as Dr. Webb. Your Honor, unless I'm missing it, I'm  
22 missing the transcript, I do not believe any of these  
23 regulations that were just introduced were introduced to the  
24 jury or during the trial.

25 THE COURT: Well, they don't have to be introduced to



1 the jury. The State does not have an obligation to do that  
2 because the State doesn't educate the jury on what the law is.  
3 To State does not educate the jury on the law to be applied in  
4 the case, that is the judge's responsibility, so that's what  
5 I'm trying to decipher from you. It sounds like your motion to  
6 reconsider is based upon your allegations that the State didn't  
7 do with the State was required to do at the trial when, in  
8 fact, your argument is the judge didn't do what the judge was  
9 required to do at trial.

10 MS. THOMPSON: That's right, Your Honor, and that  
11 affected his right to a fair trial in not giving to jury the  
12 full law on navigating the facts of the case with the evidence,  
13 Your Honor.

14 THE COURT: But I mean, it's like your motion is  
15 based upon burden-shifting, and you keep saying the state is  
16 required to do this. I mean, are you changing courses here in  
17 your argument here in the motion hearing? That's why I'm  
18 having trouble, I think, following. And granted, a lot of this  
19 is due to the fact that I was not the trial judge --

20 MS. THOMPSON: Yes, Your Honor.

21 THE COURT: -- but it does seem like that during the  
22 course of you arguing your motion you kind of keep shifting  
23 positions, not as to whether or not your client is entitled to  
24 a new trial, but whether or not it's burden-shifting under the  
25 law, and therefore unconstitutional, or whether or not the

1 State failed to present something that the State was required  
2 to present, or whether or not the judge failed to charge the  
3 jury and the judge was deficient in his duties at trial. What  
4 is it your arguing?

5 MS. THOMPSON: All three, Your Honor, and that's why  
6 I have two -- I mean, I have all three in my written motion. I  
7 think all of that goes to a new trial. Burden-shifting is  
8 something that goes in front of a jury, and the burden was  
9 shifted to the defendant continuously throughout the trial in  
10 front of the jury, so that is why I still state --

11 THE COURT: I mean, I guess the state said --

12 MS. THOMPSON: And objected to that.

13 THE COURT: And the judge said what?

14 MS. THOMPSON: He let it continue until after --

15 THE COURT: He said overruled --

16 MS. THOMPSON: And so then after the jury came out  
17 and they had post-trial motions like a month or so after the  
18 trial, he went back through his notes, and there's a full trial  
19 transcript of that, too, and said, I messed up here, this was  
20 burden-shifting here, and you know, posed questions to the  
21 State as to why it wasn't burden-shifting, and we have a full  
22 transcript of that, if Your Honor would like to review it, the  
23 judge pointing out the errors of law that he made throughout  
24 the trial that allowed the burden-shifting to continue and  
25 allowed this to get to jury when they didn't have all the full

1 regulations, because in pre-trial motions that was one of the  
2 big issues is that they charged him under this regulation but  
3 didn't have the other the regulations, and the defense attorney  
4 stated --

5 THE COURT: When you say "they" had these  
6 regulations, who are you taking about?

7 MS. THOMPSON: The state, I'm sorry, Your Honor.

8 THE COURT: Why does the State have to have the  
9 regulations?

10 MS. THOMPSON: You asked was it addressed by the  
11 defense that they didn't introduce that to a jury, and they did  
12 address that in pre-trial motions, and the judge told the State  
13 in pre-trial motions, like, just lay out the regulations, I'm  
14 not going to argue it during pre-trial motions, when you get  
15 there, when you have the regulations and rules for keeping  
16 documents, how long you have to keep them, what has to be kept,  
17 all of that, when you get there just put it into evidence, and  
18 that is what the judge realized at the conclusion of the trial  
19 is they never did.

20 THE COURT: Anything else?

21 MS. THOMPSON: Nothing further, Your Honor. I do  
22 have those transcripts if you would like to take it under  
23 advisement and read any of it.

24 THE COURT: I'm going to have to. I'm sure it's  
25 pretty voluminous, so don't know when I'll get you a decision.

1 MS. THOMPSON: Yes, Your Honor.

2 MS. WALTER: And Your Honor, I would ask that the  
3 defense provide the State with a copy of the transcript from  
4 the post-trial arguments.

5 MS. THOMPSON: We haven't got it yet.

6 MS. WALTER: From the one that you've been citing to?

7 MS. THOMPSON: We have that one.

8 MS. WALTER: That's what I'm asking for, the one from  
9 the post-trial arguments.

10 THE COURT: Whatever you're giving me, you'll need to  
11 give to the State.

12 MS. THOMPSON: Sure. Do you have the trial  
13 transcript?

14 MS. WALTER: I would like a copy of specifically what  
15 you're providing to Judge Culbertson.

16 THE COURT: Whatever you're giving me, give to them.

17 MS. THOMPSON: Yes, Your Honor. That's a copy of the  
18 trial transcript. I don't see the post-trial motion transcript  
19 in that.

20 MS. HILLER: We put it as part of the record for the  
21 last hearing.

22 MS. WALTER: And I was not provided with a copy at  
23 that time either.

24 THE COURT: That was done after I had already made my  
25 ruling.

1 MS. THOMPSON: I'll get copies to the State. Is it  
2 okay if I email that or Dropbox it?

3 MS. HILLER: Would you like a printed copy?

4 MS. WALTER: I would prefer a printed copy.

5 MS. HILLER: We'll get it to you tomorrow, is that  
6 okay?

7 MS. WALTER: Yes.

8 MS. THOMPSON: And we can submit to Your Honor and  
9 the State the transcript from post-trial motions, as well.

10 THE COURT: I mean, we're here to argue your motion.

11 MS. THOMPSON: Yes, Your Honor.

12 THE COURT: So present what you want me to consider  
13 now.

14 MS. THOMPSON: Yes, Your Honor.

15 THE COURT: We're not going to keep supplementing  
16 records and adding stuff after the hearing and doing things  
17 like that, so whatever you want me to review you need to give  
18 to me now.

19 MS. THOMPSON: Yes, Your Honor.

20 MS. HILLER: Judge, it's my fault, I didn't bring it.  
21 I thought I had it and it is not here with the other stuff. I  
22 can have it to you this afternoon.

23 THE COURT: No, that's alright. I'll just review  
24 what you've given up and we're eliminating the record to what  
25 we've got here, which is something before Judge Macaulay on

1 June 18, 2019.

2 MS. HILLER: That is the trial transcript, Judge.  
3 That's what I handed up. I'm not sure why, I thought they were  
4 all there in that pile, and I was mistaken. They must be  
5 sitting on my desk.

6 THE COURT: Alright, well, I'll take a look at this.

7 MS. HILLER: I saw the three pieces and I thought  
8 that was the three things I was trying to hand up, Judge, I'm  
9 sorry.

10 THE COURT: Well, I'll go with what's been given up  
11 to me.

12 MS. THOMPSON: Your Honor, I have it right here.  
13 Let me just take my sticky notes off. I'm finding out what it  
14 is to make sure I give it to you.

15 MS. WALTER: Well, I also want to make sure that  
16 there are no notations on what they're handing up.

17 MS. THOMPSON: There are.

18 MS. WALTER: Well, that's inappropriate, I would  
19 suggest.

20 MS. THOMPSON: Your Honor, I did make it part of the  
21 record for the original hearing.

22 THE COURT: After I made the ruling.

23 MS. THOMPSON: Yes, Your Honor.

24 THE COURT: So after I made my ruling what you handed  
25 up --

1 MS. THOMPSON: Yes, Your Honor, and Mr. Holford did  
2 say he would not stand in on behalf of the prosecutor unless he  
3 checked with her first, and he did check with her and make sure  
4 that was fine to put into the record and he said that she said  
5 that it was fine that we made it part of the record.

6 MS. WALTER: My objection now is that there are  
7 annotations on what you were handing up to the judge, that is  
8 inappropriate.

9 MS. HILLER: Your Honor, I can e-mail this right this  
10 minute to you. I could have it in your in-box in two minutes.

11 THE COURT: Wait a minute.

12 MS. HILLER: It's right here, a clean copy. I can  
13 copy, of course, you on it, if that would be okay. I  
14 apologize.

15 THE COURT: Well, no, because see, when you start  
16 supplementing stuff, when you come to a motion hearing and you  
17 don't have all of your materials and you keep changing your  
18 arguments and you keep modifying your arguments, how -- I mean,  
19 if the State was doing this you would be jumping and screaming  
20 and saying, Judge, they are here for their motion, they don't  
21 have their materials, they don't have their stuff.

22 MS. THOMPSON: Your Honor, I believe since it was  
23 made part of the record in the original motion, I did not --

24 THE COURT: It was made a part of the record after  
25 the original motion after that Court had made a decision, after

1 the Court had made a ruling, and then defense counsel said,  
2 woops, wait a minute, let me put this in the record, and the  
3 State consented and we did that, okay?

4 MS. THOMPSON: Yes.

5 THE COURT: Alright. This April 22nd and 23rd, 2019,  
6 this is part of the trial transcript?

7 MS. THOMPSON: Yes, Your Honor.

8 THE COURT: And June 18, 2019 is what?

9 MS. THOMPSON: That is the post-trial motion  
10 transcript.

11 THE COURT: And then this that you handed up starting  
12 with page 87?

13 MS. THOMPSON: Trial transcript.

14 THE COURT: So these are trial transcripts. We have  
15 the trial transcripts and then I'll review the June 18th  
16 transcript.

17 MS. THOMPSON: That was the transcript we're missing,  
18 Your Honor, we didn't pass it up, I guess we just didn't read  
19 the label right. I apologize. If you have June 18th, that is  
20 the post-trial transcript we were referring to.

21 THE COURT: I'll take a look at those and I'll let  
22 you know.

23

24

25



1 CERTIFICATE

2 STATE OF SOUTH CAROLINA

3 COUNTY OF HORRY

4 I, Julie A. Kevish, Official Court Reporter for the  
5 State of South Carolina, do hereby certify that the foregoing  
6 is a true, accurate and complete Transcript of Record of the  
7 proceedings had and evidence introduced in the Court of Common  
8 Pleas for Horry County, South Carolina, on the 21st of  
9 September, 2023.

10 I do further certify that I am neither of kin,  
11 counsel, nor interest to any party hereto.

12 September 21, 2023

13

14

  
-----

15

JULIE A. KEVISH  
OFFICIAL COURT REPORTER

16

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18

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25

STATE OF SOUTH CAROLINA     )  
                                                           )  
COUNTY OF HORRY                 )

INDICTMENT

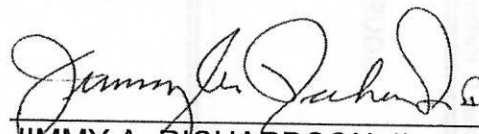
At a Court of General Sessions, convened on JUNE 22, 2017, the Grand Jurors of Horry County present upon their oath:

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 Control

*Derek Strickland*

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

ARREST WARRANT NUMBER

A2610200648

CDR: 0561 44-53-0390

DOA: 3/10/2017

ACTION OF GRAND JURY

TRUE BILL

*Mark Hanna*  
Foreperson of Grand Jury

Date:

JUN 22 2017

DICT

Foreperson of Petit Jury  
Date:

VS.

THE STATE

John Alexander Webb  
W/ M

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

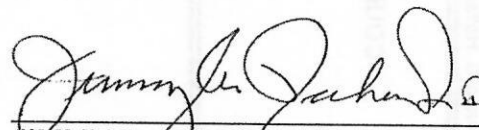
At a Court of General Sessions, convened on JUNE 22, 2017, the Grand Jurors of Horry County present upon their oath:

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 Control

*Derek Strickland*

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

ARREST WARRANT NUMBER

PA2610200649

CDR: 0561 44-53-0390

DOA: 3/10/2017

ACTION OF GRAND JURY

TRUE BILL

*Mark Campbell*  
Foreperson of Grand Jury JUN 22 2017  
Date:

INDICT

Foreperson of Petit Jury  
Date:

vs.

THE STATE

John Alexander Webb  
W/ M

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

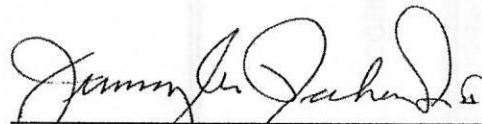
At a Court of General Sessions, convened on JUNE 22, 2017, the Grand Jurors of Horry County present upon their oath:

VIOLATION OF DRUG DISTRIBUTION LAW

CDR: 0561 44-53-0390

That John Alexander Webb did in Horry County 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 Control

*Derek Strickland*

DOCKET NO. 2017-GS-26- 031410

The State of South Carolina

County of Horry

Joshua D. Holford

17H01830

COURT OF GENERAL SESSIONS

JUNE, 2017 TERM

REST WARRANT NUMBER

7A2610200646

CDR: 0561 44-53-0390

DOA: 3/10/2017

ACTION OF GRAND JURY

TRUE BILL

*Michael Lawrence*  
Foreperson of Grand Jury

by:

JUN 22 2017

ADICT

Foreperson of Petit Jury  
Date:

VS.

THE STATE

John Alexander Webb  
W/ M  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

ATTORNEY: Francis A. Humphries Jr.

Indictment for

VIOLATION OF DRUG DISTRIBUTION LAW

Jimmy A. Richardson, II, Solicitor

ORIGINAL



COUNTY OF Horry  
 STATE VS.  
John Alexander Webb  
 AKA: \_\_\_\_\_  
 Race: WHITE Sex: M Age: 42  
 DOB: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Z: \_\_\_\_\_  
 DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

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

☒ NON-VIOLENT

☐ VIOLENT

☐ SERIOUS

☐ MOST SERIOUS

☐ Mandatory GPS(CSC

☐ §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:

SC103036

SC Bar#

Defendant

Humphries Jr., Francis A.  
 Attorney for Defendant

SCB12921

SC Bar#

WHEREFORE, the Defendant is committed 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 90 years, and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of 90 days/months/years and/or payment of \$ \_\_\_\_\_, plus costs and assessments as applicable\*; the balance is suspended with probation for one year, 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   | \$ <u>100.00</u> |
| §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    | \$ <u>25.00</u>  |
| §14-1-213 (Drug Court Surcharge)       | \$150   | \$ <u>150.00</u> |
| §50-21-114 (BUI Breath Test Fee)       | \$50    | \$               |
| §56-5-2942(J) (Vehicle Assessment)     | \$40/ea | \$               |
| 3% to County (if paid in installments) |         | \$ <u>8.25</u>   |

TOTAL

283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

INDICTMENT/CASE#: 2017GS2603144

A/W#: 2017A2610200648

Date of Offense: 7/7/2016

S.C. Code § : 44-53-0390

CDR Code #: 0561

#### SENTENCE SHEET

☒ CONVICTED OF

or ☐ PLEADS

for

Waller, Mary-Ellen

☐ 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 90 years, and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of 90 days/months/years and/or payment of \$ \_\_\_\_\_, plus costs and assessments as applicable\*; the balance is suspended with probation for one year, which are incorporated by reference.

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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:

|                                        |         |                  |
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| 3% to County (if paid in installments) |         | \$ <u>8.25</u>   |

TOTAL

283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

PTUP

240 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E (beginning) 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.

Presiding Judge

Judge Code: 2003

Sentence Date: 4/23/19



## STATE OF SOUTH CAROLINA

COUNTY OF  
STATE

Horry

VS.

John Alexander Webb

AKA:

Race: WHITE Sex: M Age: 42

DOB:

Address:

City, State, Zip:

DL#:

SID#:

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

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

§ 17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SC103036

SC Bar#

Defendant

Humphries Jr., Francis A.  
Attorney for Defendant

SCB12921

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☒ County Detention Center, for a determinate term of 90 days days/months/years or ☐ under the Youthful Offender Act not to exceed 90 days years and/or to pay a fine of \$ 100.00; provided that upon the service of 90 days days/months/years and/or payment of \$ 100.00 plus costs and assessments as applicable\*; the balance is suspended with probation for one year 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 %)        | \$      |           |
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| Proviso (Public Def/Probation)         | \$500   | \$        |
| §14-1-212 (Law Enforce. Funding)       | \$25    | \$ 25.00  |
| §14-1-213 (Drug Court Surcharge)       | \$150   | \$ 130.00 |
| §50-21-114(BUI Breath Test Fee)        | \$50    | \$        |
| §56-5-2942(J) (Vehicle Assessment)     | \$40/ea | \$        |
| 3% to County (if paid in installments) |         | \$ 2.25   |

TOTAL

283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

Renee Glus  
Sallie Beth Todd

SCCA/217 (04/2018)

## 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

☒ CONVICTED OF

or

☐ PLEADS

w/minor 1st or Lewd Act)

(defendant's initials)

☐ Recommendation by the State.☐ State Department of Corrections,☒ County Detention Center,☐ under the Youthful Offender Act not to exceed

years

of \$ \_\_\_\_\_ plus costs and assessments as applicable\*; the balance is suspended with probation for

and subject to South Carolina Department of Probation, Parole and Pardon Services-standard conditions of probation,

which are incorporated by reference.

PTUP

240 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

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.

Presiding Judge

Judge Code:

Sentence Date:

Signature: [Signature]  
Judge Code: 2663  
Sentence Date: 4/23/19

COUNTY OF  
STATE

Horry

VS.

John Alexander Webb

AKA:

Race: WHITE Sex: M Age: 42

DOB:

Address:

City, State, Zip:

DL#:

SID#:

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

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

\$17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SC103036

SC Bar#

Defendant

Humphries Jr., Francis A.  
Attorney for Defendant

SCB12921

SC Bar#

WHEREFORE, the Defendant is committed 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 90 days/months/years and/or to pay a fine of \$ 25.00; provided that upon the service of 90 days/months/years and/or payment of \$ 25.00, plus costs and assessments as applicable\*; the balance is suspended with probation for 90 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

Total: \$ 240 plus 20% fee: \$ 48

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |                  |
|----------------------------------------|---------|------------------|
| §14-1-206 (Assessments 107.5 %)        | \$      |                  |
| §14-1-211(A)(1) (Conv. Surcharge)      | \$100   | \$ <u>100.00</u> |
| §14-1-211(A)(2) (DUI Surcharge)        | \$100   | \$ <u>100.00</u> |
| §56-5-2995 (DUI Assessment)            | \$12    | \$ <u>12.00</u>  |
| §56-1-286 (DUI Breath Test)            | \$25    | \$ <u>25.00</u>  |
| Proviso (Public Def/Probation)         | \$500   | \$ <u>500.00</u> |
| §14-1-212 (Law Enforce. Funding)       | \$25    | \$ <u>25.00</u>  |
| §14-1-213 (Drug Court Surcharge)       | \$150   | \$ <u>150.00</u> |
| §50-21-114(BUI Breath Test Fee)        | \$50    | \$ <u>50.00</u>  |
| §56-5-2942(J) (Vehicle Assessment)     | \$40/ea | \$ <u>40.00</u>  |
| 3% to County (if paid in installments) |         | \$ <u>8.25</u>   |

TOTAL

283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

Renee Ellis  
Sally Beth Trow

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

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\$17-25-45

w/minor 1st or Lewd Act)

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Attorney for Defendant

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Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

Renee Ellis  
Sally Beth Trow

Presiding Judge

Judge Code:

Sentence Date:

2017GS2603146  
2017A2610200646  
10/27/2016  
44-53-0390  
0561

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

THE STATE, Respondent

v.

John Alexander Webb, Appellant.

Appellate Case No. 2023-001578

The Honorable Benjamin H. Culbertson  
Horry County  
Trial Court Case Nos. 2017GS2603144, 2017GS2603145,  
2017GS2603146

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ORDER

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This Court orders that State's Exhibit 1 (Redacted Audio of the Defendant) be transported from the Horry County Clerk of Court to the South Carolina Court of Appeals for the purposes of review in connection to the Appeal of the above captioned case.

FOR THE COURT

BY \_\_\_\_\_  
CLERK

Columbia, South Carolina

Cc:  
Alan McCrory Wilson, Esquire  
Lacey Marie Thompson, Esquire  
J. Benjamin Aplin, Esquire  
Mary Ellen Walter, Esquire  
Seth Oskin, Esquire  
George Henry Martin, III, Esquire