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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 2025-UP-293
Filed August 13, 2025

Appellate Case No. 2023-001578

John A. Webb,

Petitioner,

vs.

State of South Carolina,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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

Attorney for Petitioner Alexander John Webb

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QUESTIONS PRESENTED

- I. Whether a trial court must grant a directed verdict where, in a prosecution under S.C. Code Section 44-53-390(a)(4), the State and the trial court fail to directly reference any statute contained in Article Three of Title 44, Chapter 53 of the S.C. Code, any rule issued by the Department of Health and Environmental Control, or any federal law setting forth record-keeping requirements, where the State instead references the terms of a defendant physician's employment agreement and licensing requirements.

- II. Whether a trial court must grant a new trial where, in a prosecution under S.C. Code Section 44-53-390(a)(4), the State and the trial court fail to directly reference any statute contained in Article Three of Title 44, Chapter 53 of the S.C. Code, any rule issued by the Department of Health and Environmental Control, or any federal law setting forth record-keeping requirements, where the State instead references the terms of a defendant physician's employment agreement and licensing requirements, and where the original trial judge found that "[t]here was no direct testimony or other evidence that the Defendant did not maintain any record required to be produced and maintained."

STATEMENT OF THE CASE

Appellant (Dr. Webb) was indicted for three violations of the drug distribution laws contained in S.C. Code Section 44-53-390(a)(4) and 44-53-340. Section 44-53-390 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).

Section 44-53-390(a)(4) must be read in conjunction with Section 44-53-340, which states:

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.

Dr. Webb proceeded to trial on April 23, 2019. At the end of the State's case, Dr. Webb moved for a directed verdict based on the State's failure to reference any statute within Title 44, Chapter 53, Article 3 of the S.C. Code of Laws Ann. (1976), as amended, any federal law, or any rule issued by the Department of Health and Environmental Control (DHEC) as required by S.C. Code Sections 44-53-390(a)(4) and 44-53-340. Trial Tr., 184-189. The Trial Court denied Appellant Webb's motion for directed verdict. Trial Tr. 189.

After Dr. Webb rested his case without offering evidence, he renewed his motion for directed verdict, which was again denied. Trial Tr. 196/11-13.

Dr. Webb was found guilty of all charges, and the Trial Court sentenced him to concurrent sentences of one year, suspended on service of 90 days to be served on weekends and one year probation to be terminated upon completion of 240 hours of community service. Id. at 237/17.

After the jury's verdicts were returned but before the sentences were given by the Court, Dr. Webb again renewed his motion for directed verdict, stating, "I need to renew my motions..." Id. at 229/6. The Trial Court responded by saying, "The motion is noted for the record and I'll give you 10 days to prepare your motion." Id. at 229/9-11 through 245/23.

Dr. Webb then filed a Motion for New Trial and/or Judgment in Arrest of Verdict. Following a hearing, the Trial Court granted the Motion in Arrest of Judgment and entered verdicts of not guilty but did not rule on Appellant Webb's Motion for New Trial. See, Order Granting Motion in Arrest of Verdict.

In the trial court's Order Granting Motion in Arrest of Verdict, the court made "Findings of Facts" which included:

- "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,”
- “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,”
- “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,” and
- “The jury 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 additional rules the Department issues, pursuant to Title 44, Chapter 53, Article 3... Section 44-53-340, and Section 44-53-390(a)(4), S.C. Code Ann. (1976).”

The State’s Motion to Reconsider was denied by the Trial Court in a written Order. See, Order Denying Motion to Reconsider.

The State then appealed the trial court’s decision to grant Dr. Webb’s motion in arrest of judgment. In an unpublished opinion, on February 15, 2023, the Court of Appeals granted the State’s appeal, found that the trial court erred in granting the judgment in arrest of verdict, and remanded the case for the trial court’s consideration of Dr. Webb’s Motion for New Trial, which the trial court had not ruled upon. State v. Webb, 2023-UP-059, Appellate Case 2020-000081 (S.C. App. 2023).

Upon remand, the case was heard by a different judge, as the original judge was no longer available. The court denied Dr. Webb's Motion for New Trial. See, Tr. Motion to Reconsider, September 21, 2023.

On appeal, the Court of Appeals found that it was proper for the trial court to deny the motions for directed verdict and for a new trial. State v. Webb, 2025-UP-293, Appellate Case 2023-001578 (S.C. App. 2025). The Court of Appeals found that "the State presented sufficient evidence regarding the requirements for recordkeeping such that the trial court properly denied the directed verdict motion," citing Strickland's testimony "that DHEC did not have specific requirements for the form of the documentation, just that it must be done." Id. at 3.

Dr. Webb now requests that this Court grant certiorari to review the lower court's decision, grant his appeal on the grounds stated below, reverse the convictions, and remand his case with instructions to grant the 1) directed verdict or 2) Motion for New Trial, as the Court deems appropriate.

ARGUMENT

- I. **This Court should grant certiorari to resolve the Question Presented:
Whether a trial court must grant a directed verdict where, in a prosecution under S.C. Code Section 44-53-390(a)(4), the State and the trial court fail to directly reference any statute contained in Article Three of Title 44, Chapter 53 of the S.C. Code, any rule issued by the Department of Health and Environmental Control, or any federal law setting forth record-keeping requirements, where the State instead references the terms of a defendant physician's employment agreement and licensing requirements.**

The question of whether and how the State must reference the requirements for record-keeping contained in Article Three, DHEC regulations, or federal law when seeking a conviction for a doctor's alleged failure to keep proper records pursuant to South Carolina Code §§ 44-53-390 and 340 is a matter of first impression in South Carolina.

It is a matter of particular importance for healthcare providers in our state, who are now subject to criminal conviction for failing to keep proper records, even when jurors have not been informed of what the record-keeping requirements are. Worse, healthcare providers are now subject to conviction for violating the record-keeping requirements contained in Article Three, DHEC regulations, or federal law when jurors are only informed of the requirements contained in a doctor's employment contract or licensing requirements that should not be subject to criminal prosecution.

In a Prosecution for Violating Record-Keeping Requirements, the State Must Identify the Record-Keeping Requirements that were Violated

The Court of Appeals stated that they “agree with the reasoning of the trial court in denying the motion” for a new trial that “[t]he State doesn’t have to introduce regulations for them to follow. The State doesn’t have to introduce the law on burglary first-degree.” State v. Webb, 2025-UP-293, Appellate Case 2023-001578, p.5 (S.C. App. 2025).

While it is true that the State is not required to introduce the law on burglary first-degree, that is because the trial court will introduce the law on burglary first-degree. The jurors are entitled to rely on the elements of first-degree burglary as provided by the trial court. Similarly, in this trial, the court’s jury instructions included the language contained in South Carolina Code Sections 44-53-340 and 390. Section 340 and 390 do not contain any specific record-keeping requirements, however, and the trial court expressly left it to the prosecutor to establish what specific record-keeping requirements Dr. Webb was alleged to have violated. Trial Tr. 216/16 through 217/14.

Pretrial, the trial court invited the prosecutor to just “publish the regulation” that the State alleged Dr. Webb violated. Trial Tr. at 64/14-15. The trial court stated, “If it’s a DHEC regulation just publish the regulation,” Id., and “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.

Although the Court of Appeals identified a DHEC regulation that would constitute a record-keeping requirement for physicians under § 44-53-340 of the South Carolina

Code, State v. Webb, 2025-UP-293, Appellate Case 2023-001578, n.1 pp.3-4 (S.C. App. 2025), neither the regulation identified by the Court of Appeals nor any record-keeping requirements contained in Article Three or federal law was provided to the jurors at trial that would have allowed the jurors to find that Dr. Webb violated § 44-53-340.

The Court of Appeals says that “the State presented sufficient evidence regarding the requirements for recordkeeping such that the trial court properly denied the directed verdict motion,” citing Strickland’s testimony “that DHEC did not have specific requirements for the form of the documentation, just that it must be done.” Id., p.3.

Investigator Strickland did not testify as to any specific record-keeping requirements contained in state or federal law or DHEC regulations. He confusingly and 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:

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.

Trial Tr. pp. 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:

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.

Trial Tr. 166/5-17. A violation of the Bureau of Drug Control’s requirements is not prosecutable under South Carolina Code § 44-53-390 and 340, however.

Although Investigator Strickland testified as to some requirements for licensing by the Board of Medical Examiners (which should have been excluded per the trial court’s ruling on the State’s motion in limine, see Trial Tr. 61/13 through 77/12), at least one requirement of the Bureau of Drug Control (that a record must be kept for at least two years), and some of the record keeping requirements specific to pharmacists, neither Investigator Strickland nor any other witness 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.

Dr. Webb was Convicted of Violating the Terms of his Residency Contract

The Court of Appeals notes that Dr. Webb’s argument that he was “convicted of violating the terms of his contract” is not preserved for appeal. State v. Webb, 2025-UP-293, Appellate Case 2023-001578, n.2 p.4 (S.C. App. 2025).

Respectfully, Dr. Webb argues that the fact that he was convicted of violating the terms of his contract is not a separate ground for appeal. Rather, it illustrates how and why he was convicted for violating record-keeping requirements when the jurors were never informed of the record-keeping requirements he was alleged to have violated.

Section 44-53-340 only references 1) Article Three, 2) DHEC regulations, and 3) federal law. It does not reference a standard of care, a doctor's employment contract, licensing rules, the Bureau of Drug Control's rules, or any other source of record-keeping requirements.

Although the State's witnesses did not inform the jurors of the specific record-keeping requirements contained in Article Three, DHEC regulations, and federal law, they did provide irrelevant information about the terms of Dr. Webb's residency contract and other rules for record-keeping that only served to confuse the jurors.

The prosecutor, in closing, urged the jurors to convict Dr. Webb because he "moonlighted," which "shows another rule that this Defendant broke," Trial Tr. 199/11-12, because he wrote prescriptions that were "unusual" based on the time they were called in, Trial Tr. 200/2-5, because the prescriptions he called in were for "heavily abused drug[s]," Trial Tr. 200/6-12, and "to protect the patient[s]," Trial Tr. 202/18-25, all improper bases for a conviction and unrelated to any specific record-keeping requirements contained in Article Three, DHEC regulations, or federal law.

The prosecutor reviewed some of the requirements of Dr. Webb's contract with the residency program in his closing argument, but not the relevant state or federal laws or regulations. The requirement of not moonlighting, for example, is a requirement of Dr.

Webb's employment contract with the residency program and is unrelated to any state or federal law or regulation. Trial Tr. 199/9-12. The prosecutor emphasized to the jurors that Dr. Webb did not comply with his training for the residency program. Trial Tr. 201/9-19.

Pretrial, the State made a motion in limine asking the Court's approval to introduce these unrelated employment terms, and the Court denied the State's motion. Trial Tr. 76/2-12.

Dr. Webb objected to the testimony under Rule 404 because "they are offering testimony about a crime or an alleged crime for which he is not indicted, which then goes back to 404 and 404(b)" Trial Tr. 78/ 11-17 and argued that "he's indicted under a particular code section 44-53-390, which craves reference of 44-53-340. But it does say in plain language that the record keeping requirements -- it references the record keeping requirements of that article, which is article 3. That is the plain language of the statute without question. So that's what he has to have violated in order to be guilty of this statute, not some other standard of care." Trial Tr. 90/15-24.

The trial court agreed, suggesting that the State simply publish to the jurors any DHEC regulation that the State alleged Dr. Webb had violated. The trial court stated, "If it's a DHEC regulation just publish the regulation," Trial Tr., 64/14-15, and "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." Trial Tr. 68/7-9.

The testimony heard by jurors that could have been a basis for conviction (and that was urged as a basis for conviction by the prosecutor in closing) did not include any

record-keeping requirements from Article Three of Title 44, DHEC regulations, or federal law. The testimony that jurors did hear included:

- DHEC does not “have any specific guidelines as far as documentation...” Trial Tr. p. 164/17 through 165/3,
- The Bureau of Drug Control requires physicians to maintain records for two years, and it is against the law for a physician to lose their documentation even if it is beyond their control, Trial Tr. 166/5-17,
- Licensing requirements of the LLR and Board of Medical Examiners, Trial Tr. 113/19 through 115/16,
- Dr. Webb’s contract with the residency program required him to keep records, Trial Tr. 116/16-21,
- Dr. Webb breached his employment contract by “moonlighting,” Trial Tr. 116/22 through 117/12,
- The contents of Dr. Webb’s contract with the residency program and his application to the residency program, Trial Tr. 121/15 through 122/11,
- The contents of Dr. Webb’s Graduate Medical Education Training Agreement, which prohibits “moonlighting,” Trial Tr. 124/7 through 125/7,
- The residency program’s prohibition on prescribing to family members, “a policy that may or may not be in the contract,” Trial Tr. 125/11 through 126/7, 130/3-11, and
- Pharmacists have record-keeping requirements, and the State’s pharmacist witness “would hope the doctor also keeps it.” Trial Tr. 154/11-22.

None of these facts is a proper basis for conviction under Sections 44-53-340 and 390. Despite the Court's ruling that the State limit their case to the record-keeping requirements of Article Three, DHEC regulations, and federal law, and the Court's admonishment to "just publish the regulation," Trial Tr., 64/14-15, 68/7-9, the prosecutor did not publish the regulation and failed to inform the jurors of 1) what the record-keeping requirements were that applied to Dr. Webb and 2) how Dr. Webb violated those record-keeping requirements.

Dr. Webb made a timely motion for a directed verdict on the grounds that the State did not introduce any evidence of state or federal laws or regulations regarding the record-keeping requirements, Trial Tr. 184/13 through 189/24, and renewed his motion for a directed verdict after the defense rested its case. Trial Tr. 196/11-13.

There was a Material Variance Between the Indictment and the Proof

The decision of the Court of Appeals is in conflict with this Court's recent decision in State v. Dent, Opinion No. 28289, Appellate Case No. 2024-000355 (S.C. 2025):

In criminal trials, where the weight of the government comes to bear against an individual citizen, indictments are a foundational part of that citizen's constitutional right to due process: they put the citizen on formal notice of the charges against him and the theories the government intends to present at trial to show the citizen violated the law, thereby allowing the citizen to prepare a defense. A conviction based on unindicted conduct cannot stand.

Dr. Webb was indicted for violating the record-keeping requirements of South Carolina Code Sections 44-53-390 and 340, which expressly include only those

requirements found in Article Three, DHEC regulations, or federal law. He was not indicted for violating the terms of his residency contract, requirements issued by licensing authorities, requirements imposed by the Bureau of Drug Control, or the record-keeping requirements that apply to pharmacists.

Nevertheless, the only evidence presented to jurors at trial relating to record-keeping requirements consisted of the terms of his residency contract, requirements issued by licensing authorities, requirements imposed by the Bureau of Drug Control, and a reference to the record-keeping requirements for pharmacists – all unindicted conduct.

As the trial court stated in the Order Granting Motion in Arrest of Verdict's Findings of Fact, "The jury 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 additional rules the Department issues, pursuant to Title 44, Chapter 53, Article 3... Section 44-53-340, and Section 44-53-390(a)(4), S.C. Code Ann. (1976)."

- II. This Court should grant certiorari to resolve the Question Presented: Whether a trial court must grant a new trial where, in a prosecution under S.C. Code Section 44-53-390(a)(4), the State and the trial court fail to directly reference any statute contained in Article Three of Title 44, Chapter 53 of the S.C. Code, any rule issued by the Department of Health and Environmental Control, or any federal law setting forth record-keeping requirements, where the State instead repeatedly references the terms of a defendant physician's employment agreement**

and the requirements for licensing, and where the original trial judge found that “[t]here was no direct testimony or other evidence that the Defendant did not maintain any record required to be produced and maintained.”

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 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.

In the Trial Court’s “Findings of Facts,” the Court found that:

- “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:

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 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 Dr. 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 Dr. Webb’s motions for directed verdict, the trial court appears to have recognized its error. The court attempted to grant Dr. 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.”

In granting Dr. Webb’s motion for verdict in arrest of judgment, the trial court chose the one remedy presented to it that was not permitted under South Carolina law. The trial court’s intent – to grant a directed verdict or new trial - is clear from the trial court’s Order, and a directed verdict or new trial is necessary and appropriate based on the trial court’s Findings of Fact and Conclusions of Law.

The Court of Appeals, after finding that the grant of a verdict in arrest of judgment was not the proper remedy, remanded this case with instructions for the lower court to consider and rule upon Appellant Webb’s new trial motion.

Upon remand, however, a different judge, who was not present for trial and did not observe the witnesses, disregarded the trial judge’s Findings of Facts and denied Dr. Webb’s Motion for New Trial and subsequent Motion to Reconsider, stating:

The State doesn’t have to introduce regulations for them to follow. The State doesn’t have to introduce the law on burglary first degree. The State prosecutes facts and then the judge says: Alright, jury, you find the facts... The State doesn’t

tell the jury what the law is, the defense attorney doesn't tell the jury what the law is, the judge tells the jury what the law is.

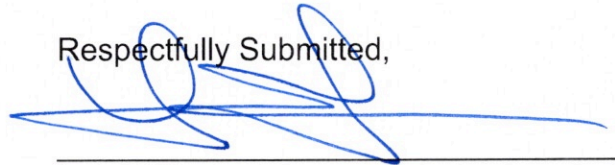
Tr. Motion to Reconsider, 12/18 through 13/2, September 21, 2023.

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

CONCLUSION

For the foregoing reasons, the Writ of Certiorari should be granted.

Respectfully Submitted,



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

Attorney for Petitioner John Alexander Webb

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PROOF OF SERVICE

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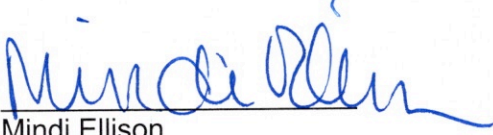
South Carolina Supreme Court
supctfilings@sccourts.org

South Carolina Court of Appeals
ctappfilings@sccourts.org

J. Benjamin Aplin, Esq.
baplin@scag.gov

Alan McCrory Wilson, Esq.
agwilson@scag.gov

Jimmy A. Richardson, Esq.
richj@horrycountysc.gov



Mindi Ellison
Paralegal
Thompson and Hiller Defense Firm