

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

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JUL 08 2019
SC Court of Appeals

APPEAL FROM Horry COUNTY
Court of General Sessions

Alexander Macaulay, Circuit Court Judge

Case No. 2017-GS-26-03144 - 46

The State,Respondent.
v.
John Webb,Appellant.

MOTION TO HOLD APPEAL IN ABEYANCE AND REMAND

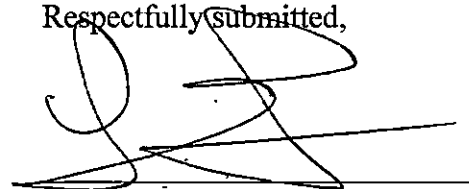
The Appellant, through undersigned counsel, moves for this court to hold the appeal in abeyance and remand for disposition of the post-trial motion (attached).

Undersigned counsel was retained on May 22, 2019 for the Appellant's appeal. Before that date, trial counsel had already filed a notice of intent to appeal on April 26, 2019 with Horry County and a notice of appeal was mailed to the solicitor on May 2, 2019. Counsel below was advised that trial counsel had also filed a post-trial motion on April 25, 2019. The hearing for the post-trial motion was June 18, 2019. At that hearing, the judge took the motion under advisement. A ruling has not yet been made as trial counsel and the prosecutor are waiting for a copy of the trial transcript to submit a proposed order.

Since a post-trial motion for a new trial was made on April 25, 2019, the appeal was stayed and would have remained stayed until the trial court's ruling. Undersigned counsel is unaware as to why trial counsel filed the notice of appeal after the post-trial motion as the time to file the notice of appeal was stayed.

With the filing of the post-trial motion, undersigned counsel moves for this court to hold the appeal in abeyance as it was prematurely filed. Undersigned counsel moves to remand the case for disposition of the post-trial motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Lacey Thompson', written over a horizontal line.

Lacey Thompson
604 16th Ave. North
Myrtle Beach, SC 29577
Phone: 843-444-6122
Attorney for Appellant

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
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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.

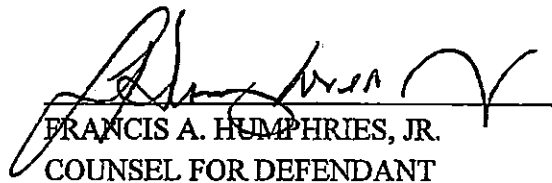
On April 23, 2019, Defendant was found guilty by a jury of his peers of all charges in the above captioned indictments. As a result, Defendant was sentenced to one (1) year suspended upon the service of ninety (90) days, which may be served on weekends, and one (1) year probation, the conditions of which 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:



FRANCIS A. HUMPHRIES, JR.
COUNSEL FOR DEFENDANT

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Myrtle Beach, South Carolina

April 25, 2019

THOMPSON DEFENSE FIRM

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July 3, 2019

S.C. Court of Appeals
Clerk of Court
P.O. Box 11629
Columbia, SC 29211

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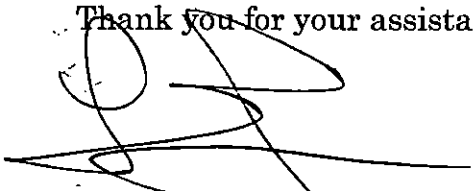
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SC Court of Appeals

RE: State of South Carolina v. John Webb
Case No: 2017-GS-26-03144 - 46

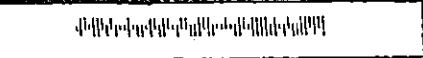
Enclosed is a Notice of Appearance in the above referenced case. Also enclosed is a request for the trial transcript, which was requested on May 22, 2019, and a Motion to Hold Appeal in Abeyance and Remand. Please file the enclosed documents and return the clocked copies in the envelope provided.

Thank you for your assistance in this matter.



Lacey Thompson
Attorney at Law

Cc: Mary Ellen Walter
Office of Attorney General



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