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March 15, 2022

VIA ELECTRONIC SUBMISSION
Clerk of Court
Richland County Circuit Court
P. O. Box 2766
Columbia, SC 29202

RE: City of Columbia v. Marie-Thérèse Assa'd-Faltas
Case No.: 2019-CP-40-01374

To Whom it May Concern:

In regard to the above-mentioned matter, please find attached Defendant Faltas' Notice of Appeal of the Hon. D. Craig Brown February 9, 2022 order. This is being filed as a courtesy to Defendant Faltas per the July 8, 2021 Order of Judge Brown and the September 15, 2020 Order of the SC Supreme Court limiting Dr. Faltas' *pro se* filings. There is a pending motion for Dan Addison to be relieved as counsel. Per my reading of Rule 608, the appointment to this case ended upon the ruling of Judge Brown affirming the lower court ruling, however, as Faltas cannot file documents with the Courts of SC pro se, I am filing this matter as a courtesy for her to ensure that she complies with the prior Orders of Judge Brown and the Supreme Court.

Sincerely,

R. Daniel Addison

RDA/mpp
Enclosures

cc: Marshall S. James, Esq. (via email w/enclosures)

STATE OF SOUTH CAROLINA ("SC") IN THE CIRCUIT COURT OF COMMON PLEAS
COUNTY OF RICHLAND No. 2019-CP-40-01374
Appeal from Magistrate Court, Summary Court No.L066971 (Transferred from Columbia's Municipal Court)

CITY OF COLUMBIA, Plaintiff
v.
Marie Assa'ad-Faltas, MD, MPH

Defendant/Appellant's *TIMLEY* Notice of Appeal and Motion for Transcript submitted to SC's Supreme Court ("SC S Ct") from SC Circuit Judge Brown's 9 February 2022 Affirmance of all the Magistrate's Rulings on Defendant's SC Crim.R. 29(b) Motion to Reopen based on after-discovered evidence and 11 March 2020 Denial of *Timely* Motion to Reconsider under Rule 59(e), SCRCP.

Defendant Marie Assa'ad-Faltas, MD, MPH ("Dr. Assa'ad-Faltas" or "Dr. Faltas") hereby *timely* appeals to SC S Ct from SC Circuit Judge Brown's ("Judge Brown") 9 February 2022 ORDER affirming *basically all* **Dentsville Magistrate** Phillip F. **Newsom**'s ("**DMN**") actions and rulings below, and from all parts of Judge Brown's 11 March 2022 ORDER denying reconsideration except for his correct finding that a criminal defendant's right to compulsory process extends to an SC Crim.R. 29(b) hearing. SC S Ct *may* transfer this case to SC's Court of Appeals ("SC CoA"); but SC S Ct is asked to retain this appeal because SC S Ct had prevented Dr. Assa'ad-Faltas' *pro se* advocacy in this case and SC S Ct is now asked to correct the effects of its own errors as no lower court has present authority to do. Dr. Assa'ad-Faltas also moves for an ORDER requiring SC Commission on Indigent Defense to pay for the transcript of the short hearing in this matter before Judge Brown in Richland County on 28 January 2022.

Dr. Assa'ad-Faltas has no objection to Mr. Dan Addison, through whom this motion is filed and served, being relieved as Dr. Assa'ad-Faltas' counsel as soon as the appeal is perfected.

Sincerely submitted and served electronically on Mr. Marshall James, counsel for the City of Columbia, *via* Mr. Dan Addison on 15 March 2022, all God so willing.

s./Maria Assa'ad-Faltas

s/Marie Assa'ad-Faltas, MD, MPH, Defendant/Appellant *pro se*
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
City of Columbia,	)	C/A no. 2019-CP-40-01374
	)	
v.	)	
	)	**Order affirming the magistrate's denial**
Marie-Thérèse Assa'd-Faltas,	)	**of appellant's motion to recuse himself**
	)	**and denial of her motion to reopen**
Defendant.	)	

THIS MATTER came before the circuit court on appeal from the Richland County Magistrates Court. A hearing was conducted on January 28, 2022 via WebEx. Appearing for the City of Columbia was Mr. Marshall James. Appellant was present, audio only, and represented by Mr. Dan Addison. The parties consented to conducting the hearing via WebEx.

At the beginning of the hearing, appellant made a Motion to Relieve Counsel. This Motion was denied pursuant to our Supreme Court's September 27, 2017 Order limiting appellant's ability to appear *pro se* in appellate matters in the courts of this state.[1] Appellant's request for leave to file an interlocutory appeal was denied pursuant to S.C. Code Ann. § 14-3-330 and Rule 72, SCRCP.

I. Procedural History

A. Underlying simple assault case.

The underlying case in this matter began on September 11, 2009, when appellant was issued City of Columbia courtesy summons L066971 for simple assault at her apartment complex on Byron Road in Richland County. Appellant was found guilty of simple assault at a bench trial held before the honorable Carl Solomon of the City of Columbia Municipal Court on

[1] "Respondent's ability to proceed *pro se* shall end with the service and filing of the notice of appeal, and she shall be represented by counsel in the appeal (including any subsequent appeal to a higher court and any discretionary review under Rule 242 of the South Carolina Appellate Court Rules)."

April 25, 2013. Appellant appealed to the Circuit Court, civil action number 2013-CP-40-3522. The Hon. Alison Renee Lee affirmed the municipal court in an order dated April 17, 2015. Appellant then appealed Judge Lee's order to the Supreme Court of South Carolina, appellate case number 2015-00941. Our Supreme Court affirmed the circuit court in a published opinion, City of Columbia v. Assa'ad-Faltas, 420 S.C. 28, 800 S.E.2d 782 (2017) (reh'g denied August 17, 2017) (cert. denied October 1, 2018).

B. Current Case

Following appellant's April 25, 2013 trial in city court, appellant made a timely Motion for a New Trial. This hearing was delayed, however, pending appeal. The Hon. Philip Newsom of the Richland County Magistrates Court held a hearing on appellant's motion on February 4, 2019.[2]

Appellant appeared *pro se*. The City of Columbia was represented by Jessica Magnum. Appellant raised three matters: 1) a motion to recuse the trial judge; 2) a motion to transfer the case to the circuit court; and 3) motion for a new trial based on allegations of after-discovered evidence and prosecutorial misconduct. In support of her motion for a new trial, appellant called four witnesses, including Teresa Knox, city attorney for the City of Columbia; Dinah Gail Steele, the victim in the simple assault case and appellant's former landlord; Charlene Crouch, a witness to the simple assault who testified at appellant's original trial; and appellant herself. All three motions were denied, and a written order denying appellant's motion to reconsider the rulings was issued February 27, 2019.

[2] The trial of this matter was held in city court, but due to conflicts appellant has with all of the city judges, this hearing was held in magistrate's court.

Appellant filed a notice of appeal on March 8, 2019. On December 12, 2019, an order was issued by the circuit court, The Hon. Courtney Clyburn Pope presiding, ordering that the magistrate issue a return. The magistrate filed his return on June 23, 2021.

II. Law

Circuit judges may hear appeals from the magistrates' court. S.C. Code Ann. § 14-5-340 (1976). An appeal from magistrate's court is to the circuit court of the county in which the judgment is rendered. S.C. Code Ann. § 18-7-10. A circuit court's jurisdiction over a magistrate court's judgment is appellant in nature. *DeWitt v. S.C. Dep't of Highways and Pub. Transp.*, 274 S.C. 184, 262 S.E.2d 28 (1980).

The circuit court may affirm or reverse, in whole or in part, the judgment of the magistrate court, as to any of the parties and for errors of law or fact. S.C. Code Ann. § 18-7-170; Parks v. Characters Night Club, 345 S.C. 484, 548 S.E.2d 605 (Ct. App. 2001). However, the circuit court cannot consider questions that have not been presented to the magistrate. Indigo Assocs. v. Ryan Inv. Co., 314 S.C. 519, 431 S.E.2d 271 (Ct. App. 1993). Likewise, the parties to an appeal from the magistrate's court are restricted to the arguments raised in the magistrate's court. *Id.*

If the appealed issue is one at law, the circuit court must render judgment according to the law of the case. S.C. Code Ann. § 18-7-190. Generally, where the testimony is sufficient to sustain the magistrate's judgment, and no facts show the affirmance was influenced by an error of law, the appellate court will presume the affirmance by the circuit court was made upon the merits. Bowers v. Thomas, 373 S.C. 240, 644 S.E.2d 751 (Ct. App. 2007); Burns v. Wannamaker, 281 S.C. 352, 315 S.E.2d 179 (Ct. App. 1984).

Based upon the argument of counsel at the January 28, 2022 hearing, and upon review of the magistrate's return, I affirm the magistrate court's rulings denying appellant's motion to recuse and denying her motion to reopen the trial.

III. Recusal

Appellant moved for Judge Newsom to recuse himself. She argued it would be impossible for him to give her a fair hearing as he was under investigation by the Office of Disciplinary Counsel based on a complaint she filed against him. (Tr. p. 2 lns. 6-8, 21-22). She argued that Judge Newsom had the appearance of partiality and was presumptively vindictive towards her. (Tr. pp. 2-3, lns. 24-2). She also claimed that Judge Newsom ordered her to be "stripped naked" at a prior hearing. (Tr. p. 4 ln. 10). Judge Newsom denied appellant's motion, stating that he had conferred with the office of disciplinary counsel and that they told him that so long as he could give appellant a fair trial he could preside over the hearing. (Tr. p. 3 lns 12-15).

Throughout the three-hour hearing, Judge Newsom allowed appellant to take breaks as necessary to catch her breath. (Tr. p. 11 lns 22-24, p. 12 lns 8-9, 17-21; p. 22 ln 3; p. 25, 22-23; p. 28, lns 5-6; p. 37 lns 12-13; p. 47 lns 11-12; p. 66 lns 16-17; p. 73 lns 13-15; The court: "and just for the record I've given you breaks every time that you've asked." Dr. Faltas "And I thank you for it." p. 37 lns 15-17). He told appellant he would allow her to go to her car to retrieve documents. (Tr. p. 16 ln. 12). Judge Newsom did cut appellant off multiple times, and said he would not allow her to go on a "fishing expedition." (Tr. p. 2 lns 4-7, p. 53 ln. 23, p. 57 ln. 23). He allowed her to put her concerns on the record when he ruled against her and gave her great leeway both in advocating *pro se* and testifying. (See, e.g., tr. pp. 61-62 and 68-70). Judge

Newsom characterized appellant's examination of Ms. Knox as harassing (tr. p. 57 ln. 21) and also admonished her not to interrupt him (tr. p. 6 lns. 23-24).

A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. Canon 3(E)(1) of the Code of Judicial Conduct, Rule 501, SCACR. It is not enough for a party to allege bias; a party seeking disqualification of a judge must show some evidence of bias or prejudice. Lyvers v. Lyvers, 280 S.C. 361, 312 S.E.2d 590 (Ct. App. 1984). To compel recusal, the alleged bias of the judge must be personal, as distinguished from judicial, in nature. Christensen v. Mikell, 324 S.C. 70, 74, 476 S.E.2d 692, 694 (1996). When the moving party has failed to demonstrate some evidence of judicial bias or prejudice, an appellate court will not reverse a judge's decision not to recuse. Davis v. Parkview Apartments, 409 S.C. 266, 284, 762 S.E.2d 535, 545 (2014). If there is no evidence of judicial prejudice, a judge's failure to disqualify himself will be affirmed. Ellis v. Procter & Gamble Dist. Co., 315 S.C. 283, 433 S.E.2d 856 (1993).

This court finds that appellant has failed to demonstrate evidence of judicial prejudice, and therefore, affirms the magistrate's decision not to recuse himself. Contrary to appellant's argument before this court that the transcript is full of examples of personal bias against her, this court finds that the magistrate judge showed no bias and was, in fact, professional throughout the hearing. He allowed appellant's hearing to go on for three hours, allowed her to call four witnesses (including herself) and made sure all of her concerns were put on the record. He made sure appellant had time to fully develop her arguments, patiently explained his reasons for making decisions, and was detailed in his ruling. He accommodated her shortness of breath and gave her leave to retrieve documents from her car.

While appellant may not have liked everything that the magistrate did during the hearing, there was no personal bias in his actions. Instances where the magistrate cut appellant off, prevented her from going on fishing expeditions, and admonished her for harassing witnesses are part of that magistrate's job of keeping order in his courtroom. Even if these actions did show bias, such bias was not personal in nature. See Christensen, supra. Although the length of time it took the magistrate to produce a return is concerning, this delay occurred after the hearing and cannot be a basis for showing bias at the hearing. Even if it were, appellant has not demonstrated that any bias in this delay is personal rather than judicial in nature. See Id.

IV. Motion for a new trial based on Rule 5/Brady and after-discovered evidence

To support her motion for a new trial, appellant argued that the City of Columbia withheld evidence from her in violation of Rule 5, SCRCP and Brady v. Maryland, 373 U.S. 83 (1963,) and that she had after-discovered evidence.

A. Rule 5/Brady argument regarding evidence the city failed to produce

Appellant questioned Teresa Knox, City Attorney for the City of Columbia, to support her claims of a Rule 5/Brady violation. Appellant asked Ms. Knox who in her office is responsible for turning over discovery in a criminal case prosecuted by the city; who becomes custodian over records when a prosecutor leaves the city attorney's office; and whether Ms. Knox's office ever had the transcript for a hearing that took place on November 17th, 2009. (Tr. p. 55 ln. 5 – 56 ln. 22). Ms. Knox testified that she had no direct knowledge of any evidence in applicant's file. (Tr. p. 56 lns. 23-24). Ms. Knox also testified that the city's chief prosecutor was present, and that "She would be your best person to answer any questions about the evidence in your file." (Tr. p. 56 lns. 24-25). Applicant never called the city's chief prosecutor.

Appellant also testified herself regarding evidence the city failed to turn over. Appellant testified that the city had failed to turn over a document which stated that the victim in her assault case "has no psychological effects and no need for a doctor." (Tr. p. 124 lns. 9-10). When the court asked whether that issue was raised at trial and if appellant saw that document before the trial was over, appellant replied, "Remember I was not allowed—I tried to raise it but Mr. Lupton cut me off." (Tr. p. 124 lns. 16-17).

The magistrate denied appellant's motion to reopen based upon her Rule 5/Brady argument. Judge Newsom stated that, although he had concerns that not everything that was discoverable was given to appellant before trial, he did not have proof that the alleged document existed or not, and that appellant failed to meet her burden of proof. (Tr. p. 133 lns. 4-8). The judge also addressed Mr. Lupton and the records he allegedly failed to get at trial, saying "If he didn't get records … he could have made that motion at that time. Ther's (sic) a different forum. I understand there's a P.C.R. filed. That can be heard at that time." (Tr. p. 133 lns. 11-14).

B. After-Discovered Evidence

Appellant alleged she had four pieces of after-discovered evidence that support her motion to reopen: 1) Dinah Gail Steele's use of prescription drugs for anxiety arising from the assault; 2) Charlene Crouch's criminal record; 3) A statement by Charles White promising favorable testimony in return for dropping a subpoena; and, 4) Testimony of Teresa Ingraham.

i. Dinah Gail Steele's prescription drug use.

To support the argument that evidence of Steele's prescription drug use was after-discovered, appellant testified that "in the middle of the trial my false accuser masquerading as my victim says that she has been on medication since January 25 and she used the word still so

she was on medication for three and a half [years]." (Tr. p. 9 lns. 22-24). Appellant continued, saying "Either she was on medication that day and that would also have affected her competence to testify or she wasn't and she lied." (Tr. p. 10 lns. 15-17). Appellant also stated she wanted Steele's medical records (tr. p. 10 lns. 18-19, 24), but the magistrate said he did not have the power to compel those records (tr. p. 11 lns. 1-3). In the course of appellant's argument, the court asked appellant whether she knew what Steele's medicine was. Appellant replied, "I don't because I wasn't allowed to control the defense and the incompetent Lupton did not ask." (Tr. p. 51 lns. 17-19). The magistrate noted that Dr. Faltas was allowed to conduct cross-examinations at her own trial, and that the issue of Steele's medication was addressed in a previous circuit court order. (Tr. p. 64 ln. 25-p. 65 ln. 7).

Steele was present and called to the stand. Appellant asked her a number of questions that the magistrate court ruled irrelevant because they were not tailored to the time frame of when Steele started taking medication in relation to the assault and the trial (Tr. pp. 78-87).

ii. Charlene Crouch's criminal record

Appellant called Charlene Crouch to testify. Crouch testified that she remembered being arrested for drunkenness in April, 2012, and pleading guilty to the same in May, 2012. (Tr. p. 92 lns. 8-17). She also testified that she was trespassed from the Byron Road property by tenant Charles White, but that he called and lifted the trespass notice after only one day. (Tr. p. 92 lns 21-25). Crouch's testimony involved questions by appellant about her drunkenness charge and an assault, second charge. (Tr. pp. 97-102). Appellant also questioned Crouch over whether it was her or some other person who called the police at the time of the assault (tr. p. 107 lns. 10-22) and whether she had ever sold White a car (tr. p. 108 ln. 12).

iii. Teresa Ingram

Teresa Ingram was subpoenaed but did not appear at the hearing. (Tr. p. 27 lns. 21-23). Appellant argued that Ingram was paid in the form of free rent to testify falsely against her at her 2010 harassment trial in circuit court. (Tr. p. 28 lns 2-3). Ingram did not testify at the 2013 simple assault trial, the underlying case in this matter, although she was listed on the prosecutions' witness list (Tr. p. 31 lns. 23-24; p. 33, lns. 8-24). Appellant alleged that if Ingram were present at the hearing and told the truth, she would testify that Steele bribed her and other witnesses to testify against appellant. (Tr. p. 32 lns. 23-25).

iv. Charles White

Charles White was not subpoenaed and did not appear at the hearing. (Tr. p. 22 lns. 10-11). Appellant argued that White called her during the appeal of her simple assault conviction and told her that he would testify he was paying Crouch for sex if she lifted the subpoena against him. (Tr. p. 19 lns. 16-20). Appellant also stated she had a letter from 2009 from Charles White. (Tr. p. 19 ln. 25- p. 20 ln 8). Appellant argued that if Charles White were to testify truthfully, it would reveal that Crouch was motivated to lie at the simple assault trial so that Steele would allow her back onto the Byron Road property and Crouch could continue rendering services to White. (Tr. p. 21 lns. 5-9, p. 22 lns. 1-17).

A motion for a new trial based on after-discovered evidence is addressed to the sound discretion of the trial judge. State v. Irvin, 270 S.C. 539, 545, 243 S.E.2d 195, 197–98 (1978). The granting of a new trial because of after-discovered evidence is not favored, and this Court will sustain the lower court's denial of such a motion unless there appears to be an abuse of discretion. Id. In order to obtain a new trial based on after-discovered evidence the movant must show that the evidence 1) is such as would probably change the result if a new trial is had; 2) has

been discovered since the trial; 3) could not by the exercise of due diligence have been discovered before trial; 4) is material to the issue; and 5) is not merely cumulative or impeaching. Id.

This court affirms magistrate's ruling denying appellant's motion to reopen. As to appellant's allegations of prosecutorial conduct and Rule 5/Brady violations, the magistrate court found that the records that were allegedly withheld could have been discovered before trial and thus failed to meet one of the elements required in order to grant a motion for a new trial. The magistrate stated that if appellant's attorney failed to request or act diligently in acquiring certain documents, then those matters could be dealt with in the pending P.C.R. action. (Tr. p. 133 lns. 10-13). As to the testimony of Dinah Steele and Charlene Crouch and appellant's testimony as to what Teresa Ingram and Charles White would say if they appeared, the magistrate found that all of that evidence "would be merely impeaching rather than a direct on the fact lie." (Tr. p. 135 lns. 9-12). Because the standard to reopen requires that after-discovered evidence be more than impeaching, the magistrate did not err in denying appellant's motion to reopen based on the testimony of Steele and Crouch or the evidence presented regarding Ingram, and White.

V. Conclusion

I find that the appellant failed to demonstrate bias on the part of the magistrate, and therefore affirm Judge Newsom's denial of appellant's request that he recuse himself. Additionally, I find that the magistrate was correct in denying appellant's motion to reopen, as the evidence appellant presented was either not after discovered or was merely impeaching. The magistrate court is AFFIRMED.

[electronic signature page to follow]

Richland Common Pleas

Case Caption: City Of Columbia , defendant, et al VS Marie Assaad Faltas

Case Number: 2019CP4001374

Type: Order/Other

IT IS SO ORDERED

s/D. Craig Brown (2160)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
)	
City of Columbia,)	C/A no. 2019-CP-40-01374
)	
v.)	
)	**Order denying Appellant's Rule 59(e), SCRCP**
Marie-Thérèse Assa'd-Faltas,)	**Motion to Reconsider**
)	
Defendant.)	

THIS MOTION comes before the Court on appellant's Rule 59(e), SCRCP Motion to Reconsider. A hearing was held on January 28, 2022 on an appeal from Richland County Magistrate Judge Newsom's denial of appellant's motions that he recuse himself and to reopen her case. This court issued an Order on February 9, 2022 affirming the magistrate's denial of appellant's Motions. In light of the law governing Rule 59(e), and in consideration of the facts as stated below, the Motion to Reconsider is DENIED.

I. Legal basis for appellant's rule 59(e) motion.

This court is vested with the authority to decide this matter pursuant to Chief Justice Beatty's September 15, 2020 Order assigning jurisdiction to the Hon. D. Craig Brown over this and other cases involving appellant.

Appellant timely filed her Rule 59(e), SCRCP motion within 10 days of this Court's Order. "Rule 59(e), SCRCP, provides for a motion to alter or amend judgment and preserve the record for appeal." Pelican Building Centers v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). In her motion, appellant asks that this court "rule *in writing* on matters on which he may have ruled orally but did not reduce to writing, to correct errors of the recitations of facts, to require a complete return from [Magistrate Newsom] … and to reconsider *all* Judge Brown's rulings in this case." (p.1.)

II. Analysis of appellant's grounds for reconsideration.

Appellant's objections and requests are classified into five groups: (1) the request to clarify the court's ruling on her motion to file an Anders brief; (2) an objection to the evidentiary and legal sufficiency of the magistrate's return; (3) the applicable legal standard for determining judicial bias; (4) whether there was a violation of appellant's sixth amendment right to compulsory process; and the relevance of Dinah Gail Steele's mental injury to appellant's case. Each objection and request is addressed in turn below.

1. The court's oral ruling denying appellant's request for leave to file an Anders brief was based on a prior Order of our supreme court.

At the January 28, 2022 hearing, appellant made an oral motion for leave to file an Anders brief, which this court denied. Appellant now requests that the court reduce its ruling to writing and explain the basis for this decision.

Our supreme court's September 27, 2017 Order In the Matter of Marie Assa'ad-Faltas says that "In light of her prior conduct, Respondent's ability to proceed pro se shall end with the service and filing of the notice of appeal, and she shall be represented by counsel in the appeal (including any subsequent appeal to a higher court and any discretionary review under Rule 242 of the South Carolina Appellate Court Rules)." (p. 2.) The court finds that this portion of the supreme court's Order prohibits appellant from proceeding pro se in appellate matters, including filing an Anders brief in an appeal from magistrates court.

2. The February 9, 2022 Order was based on a sufficient return and the correct legal standard.

Appellant made multiple objections concerning the adequacy of the return, both as to its contents and as to the legal standard interpreting it. For the reasons stated below, this court finds

that the return was adequate and that both the magistrate and this court applied the proper legal standard interpreting the evidence contained therein.

A. The magistrate provided an adequate return.

Appellant asks why this court issued its February 9, 2022 Order based on an incomplete return. Upon reviewing the return and the applicable law, the court finds that the magistrate's return was neither incomplete nor defective. See S.C. Code Ann. § 18-7-80.

Judge Newsom filed his notice of return, the record, a statement of all the proceedings in the case, and the testimony taken at trial as required by S.C. Code Ann. § 18-3-40.[1] The return includes, amongst other things, transcripts of both the hearing on the motion to recuse and the motion to reopen, the appellant's 2009 courtesy summons for simple assault, a letter of disposition regarding Charlene Crouch's drunkenness charge, summary court summonses, appellant's motions for a new trial and to reconsider, the Supreme Court Order from the original trial, the Circuit Court Order remanding this case to the magistrates court, and the magistrate's February 27, 2019 Order denying appellant's motion to reconsider his ruling. Judge Newsom's return contains all of the "testimony, proceedings, and judgment" that were before the magistrate at the time of his ruling and is complete. See S.C. Code Ann. § 18-7-60.

B. This court applied the proper standard for after-discovered evidence in reviewing the return.

Appellant asserts that this court applied the wrong standard in reviewing the magistrate's return. She argues the court erred in applying the after-discovered evidence standard found in State v. Irvin, 270 S.C. 539, 243 S.E.2d 195 (1978). Appellant asks why this Court did not apply

[1] This court has previously noted that while the filing of the return was not timely, it was complete and otherwise complied with the laws governing magistrates returns.

the standard used for instances of prosecutorial misconduct for failure to disclose evidence pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and Rule 5, S.C. R. Crim. P. as stated in in Kyles v. Whitley, 514 U.S. 419 (1995) and Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006).

The reason the Court applied the standard set forth in Irvin is that this is an appeal of a motion to reopen based on after-discovered evidence, Rule 29(b), S.C. R. Crim. P., not a Rule 5/Brady motion concerning the prosecution's disclosure of evidence. Appellant makes multiple allegations that the city attorney's office, the Columbia Police Department, and SLED withheld information in order to convict appellant. The magistrate heard these arguments and deemed them insufficient to grant appellant's motion to reopen. This court agrees with the magistrate.

The magistrate properly applied the after-discovered evidence standard in its ruling, and this Court affirms. While the magistrate did not explicitly rely on Irvin, the standard set forth in that case is still the proper standard for motions based on after-discovered evidence. See, e.g., State v. Adams, 430 S.C. 420, 845 S.E.2d 217 (Ct.App. 2020) (applying the same five elements to motions based on after-discovered evidence as those applied in Irvin). Contrary to appellant's argument, the proper legal standard was applied to this motion.

IV. The Court applied the proper legal standard for determining judicial bias.

Appellant alleges that this Court applied the wrong standard in finding there was no judicial bias, and cites Caperton v. A.T. Massey Coal Co., Inc., et al., 556 U.S. 868 (2009) as the "now-controlling standard." Caperton does not create a new standard, but instead applies existing standards to a specific instance, namely, judicial election contributions. Id. at 881-82. The South Carolina Code of Judicial Conduct and our case law in this area have not been overruled by Caperton, and this Court's decision affirming the magistrate remains the same.

V. Failure to subpoena witnesses did not violate appellant's Sixth Amendment Right to Compulsory Process.

The court agrees with appellant that it made a factual error in saying that witnesses were "subpoenaed" to appear at the February 4, 2019 hearing. The proper term in this case is "summoned." The return includes thirteen summonses for various witnesses, some of whom appeared, and some of whom did not. However, this error in word choice does change the court's analysis of the case, nor does it change the court's decision affirming the magistrate.

Appellant asks this court to address whether the Compulsory Process Clause of the Sixth Amendment applies to a Rule 29(b) hearing. This court finds that it does. See S.C. Code Ann. § 22-3-930; Rule 13, S.C. R. Magis. Ct. However, there has been no violation of the Compulsory Process Clause in this case. "[T]o demonstrate a Compulsory Process Clause violation, an appellant must make some plausible showing of how the testimony of an absent witness would have been both material and favorable to his defense." State v. Brockmeyer, 406 S.C. 324, 334, 751 S.E.2d 645, 650 (2013). Appellant testified that she wished to subpoena her trial counsel, Mr. Theodore Nichols Lupton (tr.pp. 8-9); Ms. Dinah Gail Steele and her medical records (tr.p. 10); Charlene Crouch[2] (tr.p.1.); Charles White (tr.pp. 17-22); and Teresa Ingram[3] (tr.p. 27). The first fifty-three pages of the transcript of the motion to reopen are filled appellant detailing what she hoped to gain from these witnesses and pieces evidence if they were to appear in court.

Upon reviewing this testimony, and in light of the law regarding Sixth Amendment protections in post-trial motions, this court finds that appellant has failed to make a plausible showing under the Compulsory Process Clause of how the testimony of the absent witnesses and other evidence she wants subpoenaed would be both material and favorable to her defense.

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[2] Ms. Crouch and Ms. Steele were summoned by the magistrate to the hearing on the motion to reopen and examined by Dr. Faltas. See Tr.pp. 78-87, 87-110.

[3] Mr. White, Mr. Lupton, and Ms. Ingrahm were all summoned to the hearing but did not appear.

Therefore, while the Compulsory Process Clause does apply to Rule 29(b) motions generally, there is no violation in this case.

VI. Appellant failed to ask relevant questions when given the opportunity to examine Ms. Steele on her claims of mental injury.

Appellant asks this Court to clarify its ruling regarding Ms. Dinah Gail Steele's alleged mental injury and its relation to her motion to reopen. The court finds that appellant failed to show a sufficient connection between the mental injury Ms. Steele suffered and her case to justify granting the motion. In addition to being allowed to testify herself about the relation between Ms. Steele's mental injury and her case, appellant was allowed to examine Ms. Steele at length. (Tr.pp. 78-87.) While appellant's questions generally related to Ms. Steele's claims of mental injury, there were many diversions and irrelevant questions throughout the examination. The magistrate made multiple attempts to keep appellants questions focused on how Ms. Steele's mental injury related to the trial of her case, but ultimately found that she was not able to produce enough relevant evidence to grant her motion to reopen. This court agrees and upholds the magistrate's ruling.

At the conclusion of the hearing, the magistrate found applicant had failed to present sufficient evidence to support her motion to reopen. This court agrees, and for the foregoing reasons, appellant's Motion to Reconsider is DENIED.

[Signature Page to Follow]

Richland Common Pleas

Case Caption: City Of Columbia , defendant, et al VS Marie Assaad Faltas

Case Number: 2019CP4001374

Type: Order/Other

IT IS SO ORDERED

s/D. Craig Brown (2160)