THE STATE OF SOUTH CAROLINA **No. 2022-000339**

In The Court of Appeals (as Transferred from the Supreme Court of South Carolina)
APPEAL from RICHLAND COUNTY Court of COMMON PLEAS
D. Craig Brown, Circuit Court Judge, Case No. 2019-CP-40-01374,
Which is an Appeal from Richland County (Dentsville) Magistrate Phillip F. Newsom
As transferred to Richland Count Magistrates from the City of Columbia' Municipal Court (CMC)
Summary Court No. L066971

City of Columbia, SC, Respondent,

v.

Marie Assa'ad-Faltas, MD, MPH, Appellant.

APPELLANT'S MOTIONS FOR HER *PROVISIONAL* INITIAL BRIEF TO BE ACCEPTED AS TIMELY and to be allowed to be amended later AND to defer the designation of matter until all transcripts are received, all *TIMELY* Submitted in RESPONSE TO this Court's Clerk's 12 October 2022 Letter *MISTAKENLY* Alerting Appellant to Overdue Initial Brief and Designation of Matter.

Appellant cannot in good conscience concede that her contemporaneously-filed *Provisional* Initial brief is "filed out of time" as an already-and-timely ordered transcript has not yet been received and she still needs the Court's assistance in even ordering another necessary transcript. To date, and surprisingly, the Clerk of this Court had not ruled on Appellant's 13 October 2022 *first* motion for extension, which motions are *typically* granted by the Clerk within a day or two. Nonetheless, to avoid dismissal of this important appeal, Appellant moves this Court to accept the provisional brief as timely filed and to defer the designation of matter until the receipt of the missing transcripts.

Since Appellant's time to respond to the Clerk's 12 October 2022 letter expires *after* Monday, 24 October 2022, Appellant asks this Court and/or its Clerk to give her some directions before then for her much needed peace of mind in her current health condition.

Sincerely submitted and served on 21 October 2022 by:

Marie Assa'ad-Faltas, MD, MPH, Defendant/Appellant *pro se*
Post Office Box 9115, Columbia, South Carolina 29090
Phone (803) 783-4536; e-mail Marie_Faltas@hotmail.com

Certificate of Service Satisfying the *Substance* of Form 7 and of all Relevant Rules, SCACR

On 21 October 2022, I served Mr. Marshall James, sole Counsel for sole Respondent in this case, with a true copy of this document by personally going to the the City of Columbia's Legal Department's office location on Washington and Main Streets, Columbia, SC 29201, and there and then hand-delivering the true copy of this document to a person long known to me to be approved and entrusted to deliver it to Mr. Marshall, all God so willing.

s/Marie Assa'ad-Faltas, MD, MPH, Defendant/Appellant, here server *pro se*
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e-mail: Marie_Faltas@hotmail.com **and** MarieAssaadFaltas@GMail.com

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Statement of Issues on Appeal

1. Lack of jurisdiction may be raised any time. An entity which is not a court cannot have jurisdiction to try cases and pass sentences; only a sovereign may own and operate a court; the U.S. Constitution recognizes only two, **not more,** types of sovereigns: the federal government and the governments of the several states or tribal nations; political subdivisions (counties, municipalities, special-purpose districts, *etc.*) are not sovereigns nor do they partake of state's sovereignty; and South Carolina ("SC") law allows prosecutions only by SC's Attorney General ("SCAG") and the Solicitors of SC's 16 judicial circuits ("JC") and their appointed deputies, assistants, and other designees. The City of Columbia, SC ("*the* City"), a non-sovereign, may not own or operate a court. Appellant, Marie Assa'ad-Faltas, MD, MPH's ("Dr. Faltas") conviction of simple assault and 20-day sentence were void *ab initio* for having been entered by Columbia's Municipal Court ("CMC") which is not a court of a sovereign recognized by the U.S. Constitution. **An answer in Dr. Faltas' favor on this issue obviates the need for this Court to resolve the other issues.**

2. Even if CMC were *arguendo* a court permitted by the U.S. Constitution and SC statutes **not repugnant to the U.S. Constitution,** Dr. Faltas was convicted and sentenced under an ordinance of *the* City already pre-empted by state law. Laws which exempt a class of people or of conduct from prosecution are always retro-active (the reverse is **not true** due to prohibition of *ex post facto laws*). Dr. Faltas' 25 April 2013 conviction and sentence of "simple assault," which was then **not** a crime in SC, are void *ab initio.* **An answer in Dr. Faltas' favor on this issue obviates the need for this Court to resolve the other issues.**

3. Speaking for oneself is a *basic* human right. Any punishment, *a fortiori* for conduct which had **not** occurred but which was *baselessly **feared** to occur*, which denies a person the

basic human right to speak for herself, is cruel and unusual and **not known in *any* penal code of the civilized world in recorded history.** Any and all proceedings conducted while Dr. Faltas is/was under the cruel and unusual *prospective* denial of her *basic* human right to speak for herself are void *ab initio*; and so are their results. **An answer in Dr. Faltas' favor on this issue obviates the need for this Court to resolve the other issues.**

4. Since *Brady* violations deny due process to a criminal defendant, any case law which holds a motion to reopen for after-discovered evidence, *specially* where the new evidence was unavailable before trial due to *Brady* violations, "disfavored" **is tantamount to holding due process itself "disfavored."** Any opinion/ruling expressly "disfavoring" grant of a new trial based on evidence discovered after Prosecution's *Brady* violations is *ipso facto* controlled by an error of law and should be overruled. **An answer in Dr. Faltas' favor on this issue obviates the need for this Court to resolve the other issues.**

5. A *sine qua non* of due process is a disinterested/unbiased adjudicator. *The* City and consequently the judges in its employ were adverse to Dr. Faltas in separate civil litigation. Dentsville Magistrate Newsom ("DMN") had *repeatedly* expressed hostility to Dr. Faltas and her ethnicity and admitted taking actions against her (including ordering her *completely denuded* ***for non-medical reasons in front of two strangers in a courthouse*** because DMN fantasized that Middle-Easterners carry "a bomb or what." SC Circuit Judge Brown wrote *extremely* insulting falsehoods about Dr. Faltas and orchestrated her trial for contempt of court before SC's supreme court ("SC S Ct"). Thus, Dr. Faltas was denied due process at all levels by CMC's, DMN's, and SC Circuit Judge Brown's refusal of recusal. **An answer in Dr. Faltas' favor on this issue obviates the need for this Court to resolve the other issues.**

6. A motion to reopen under SC Crim R 29 is an integral part of criminal prosecution and thus subject to the Sixth Amendment's guarantees of *inter alia* speedy adjudication and compulsory process. The five years between Dr. Faltas' making her SC Crim R 29(b) motion and that motion being heard, coming after the 44 months between the charge and the actual trial on it, and followed by three years between DMN's denial of Dr. Faltas' SC Crim R 29(b) motion and DMN's **still-*incomplete* return on appeal to circuit court,** for a total of **thirteen years and six months** between Dinah Steele's September 2009 charging Dr. Faltas with simple assault and SC Circuit Judge Brown's February 2022 denial of Dr. Faltas' appeal from DMN's denial of Dr. Faltas' SC Crim R 29(b) **are a *per se* denial of Dr. Faltas' Sixth Amendment right to speedy adjudication of criminal charges against her. An answer in Dr. Faltas' favor on this issue obviates the need for this Court to resolve the other issues.**

7. SC's magistrate courts have no power to issue *subpoenae duces tecum*; and DMN refused **both** Dr. Faltas' request to transfer the case of Richland County Circuit Court of Common Pleas ("RCCCCP"), which has ***both* concurrent jurisdiction *and* broader *subpoena* power,** and Dr. Faltas' requests for DMN to issue *subpoenae* are *per se* violations of Dr. Faltas' right to compulsory process guaranteed by the Sixth Amendment. **An answer in Dr. Faltas' favor on this issue obviates the need for this Court to resolve the other issues.**

8. DMN's *repeated insistence* that witnesses who had evidence favorable to Dr. Faltas' case would have shown-up without *subpoena* or summons is such *plainly erroneous* understanding of the role necessity of compulsory process that this Court should reverse on this issue even though Dr. Faltas' forced counsel did not *initially orally* argue it to SC Circuit Judge Brown. On Dr. Faltas' *pro se* SC Crim R 29(b) motion, SC Circuit Judge Brown

did acknowledge that compulsory process is available in SC Crim R 29(b) proceedings but claimed that Dr. Faltas was not denied compulsory process. This too is plain error and should be reversed. **An answer in Dr. Faltas' favor on this issue obviates the need for this Court to resolve the other issues.**

9. DMN and SC Circuit Judge Brown erred in confusing *per se* impeaching convictions of *crimen falsi* nature with impeachment using convictions which reveal a witness' general unreliability, bad moral character, and/or motive to not tell the truth in the case at hand. **No prior conviction or prior act evidencing bad moral character of a witness or other motive for that witness to not tell the truth while testifying against a criminal defendant is *per se* excludable.** Both bench and bar confuse the right of criminal defendant to be protected from improper impeachment *when that criminal defendant testifies in his/her own defense* with **any criminal defendant's to *fully* confront (including *fully* impeach) a witness testifying against that same criminal defendant.** There is no symmetry between the power of the government entity prosecuting a criminal defendant and the power of the latter. The law recognizes that asymmetry of powers and tries to balance it with more rights of the criminal defendant *during and after* trial; *e.g.,* a criminal defendant has plenary right to appeal a conviction but the Prosecution has no right whatsoever to appeal an acquittal. **If this issue is reached, this case should *initially* be heard *en banc* to harmonize the *seemingly* conflicting decisions and give guidance to the bench and bar.**

10. DMN erred, and SC Circuit Judge Brown erred in affirming DMN, in substituting his own understanding (which was erroneous in any event) of trespass law for what a witness testifying against a criminal defendant *right or wrong **may have believed** he power of a landlady to issue and enforce* trespass notices. **Both the U.S. Supreme Court ("SCOTUS")**

and the U.S. Court of Appeals for the Fourth Circuit ("USCCA4") hold that, ***even if there were no formal agreement between the Prosecution and a witness testifying against a criminal defendant,*** the criminal defendant may explore, and impeach with, that witness' ***mere hope*** of ***future*** favorable treatment by the Prosecution in return for that witness' false, incomplete, and/or misleading testimony against the criminal defendant on trial. If this issue is reached, this case should ***initially*** be heard ***en banc*** to harmonize the ***seemingly*** conflicting decisions and give guidance to the bench and bar.

11. DMN erred, and SC Circuit Judge Brown erred in affirming DMN, in implicitly holding that once a witness who testified at trial against a criminal defendant had been *partially* impeached by some evidence, that witness cannot be further impeached by after-discovered evidence of that witness' prior convictions, bad moral character, and/or motives to not tell the truth, *specially if that evidence had been withheld by the Prosecution in violation of* Brady. **Both SCOTUS and USCCA4 hold otherwise.** Both courts having held *Brady* violations violate a criminal defendant's *federal* due process rights, their decisions bind this Court. **If this issue is reached, this case should *initially* be heard *en banc* to harmonize the *seemingly* conflicting decisions and give guidance to the bench and bar.**

12. DMN erred, and SC Circuit Judge Brown erred in affirming DMN, in refusing to see the whole case *in the new light* of the *cumulative effect* of the after-discovered evidence. **Both SCOTUS and USCCA4 hold otherwise.** Both courts having held *the cumulative effect* approach integral to a criminal defendant's *federal* due process rights, their decisions bind this Court. **If this issue is reached, this case should *initially* be heard *en banc* to harmonize the *seemingly* conflicting decisions and give guidance to the bench and bar.**

13. SC Circuit Judge Brown reversibly erred in denying Dr. Faltas the right to brief issues, specially the necessity of the SC Crim R 29(b) proceedings being transferred to RCCCCP, which Dr. Faltas' forced counsel Dan Addison refused to brief and orally argue, despite the right of *even a represented criminal defendant* to supplement counsel's brief under *Anders* v. *California,* 386 U.S. 738 (1967), and *State* v. *Williams,* 305 S.C. 116, 406 S.E.2d 357 (1991), implementing *Anders* in SC. **That right is enjoyed *even* by the worst SC murder convicts; it should shock the conscience of *every unbiased jurist* for that right to be *selectively* denied to Dr. Faltas for having done no more than win her prior cases *pro se.***

14. There is no public interest in finality of an unconstitutionally-obtained conviction. Further, SCOTUS *explicitly* held once a conviction *appears* unconstitutionally obtained, the speediest approach to relief should be taken. This Court should not be tempted to relegate any matters herein to PCR proceedings which prolong Dr. Faltas' unjust suffering.

15. Under SC's Constitution, *only* **published *decisions*** of SC S Ct are binding on this Court; and only court rules, or amendments thereto, approved by SC's General Assembly bind litigants. Under the republican form of government **guaranteed to every state by the U.S. Constitution, Article IV, Section 4,** "judicial power" does not extend beyond the power to decide cases or controversies between/among parties who voluntarily submitted to, or were properly brought within, a court's jurisdiction. The majesty of the law is not the tyranny of the robe. **Kings act "of their own volition." U.S. judges may act only on cases or controversies.** The judges of this Court, whether *en banc* or in the panel eventually assigned to this case, should apply conscientious scrutiny and independent review to every effort to treat Dr. Faltas as a third-class person, below even the worst SC criminals.

Introductory *Summary* of the Statement of the Case

In the evening of 11 September 2009, one Dinah Gail Steele ("Landlady Steele"), owner of two rental quadriplexes at 300 and 304 Byron Road, Columbia, SC 29209, ("the Byron quadriplexes"), called 911 claiming Dr. Faltas had been evicted from 304 Byron Rd. Apt.3 but "came back," "harassed" Landlady Steele, and "shoved it at [Landlady Steele]." Columbia's Police Department ("CPD") arrived later, took a report, and advised Landlady Steele to take a courtesy summons against Dr. Faltas for "simple assault" per ordinance of *the* City.

To CPD, Landlady Steele listed three purported eye witnesses, all then tenants of the Byron quadriplexes: John Mitchell Jones ("Jones"), Teresa Ingram ("Ingram," whose first and last names appear under several intentional or inadvertent misspellings in various court documents), and Charlene Crouch ("Crouch.") Landlady Steele became "livid" that CPD would not arrest Dr. Faltas there and then but instead gave her notice to appear in Columbia's Municipal Court ("CMC") on 2 October 2009. Dr. Faltas appeared and requested trial by jury and was *unconditionally* released on her personal recognizance. That day, Dr. Faltas also obtained a stay of eviction pending appeal from summary judgment entered on 1 October 2009 by Richland County, SC, ("RC") Magistrate Valerie Stroman ("RC Magistrate Stroman").

Shortly thereafter, Landlady Steele asked CPD to bring the more serious harassment in the first degree charges against Dr. Faltas. CPD assigned Landlady Steele's request to then-CPD-Investigator Amenda Star Blanton ("Blanton.") Blanton contacted then-Assistant SC 5th JC Solicitor Sara Heather Savitz Weiss ("Weiss") who was receiving $70K/year as supplement pay from *the* City to act as "the City prosecutor" in SC 5th JC Solicitor's office ("SC 5th JC SO"), an arrangement *apparently* maintained even after Weiss left that office to join SCAG's office.

Weiss/Blanton advised Landlady Steele to obtain restraining orders against Dr. Faltas,

evidently to enhance her sentence upon conviction, God forbade, of harassment. Four applications were, later in October 2009, submitted to then-RC Magistrate Michael R. Davis ("RC Magistrate Davis") by: (1) Landlady Steele, (2) her consort Larry Wayne Mason ("LWM"), (3) Jones, and (4) Ingram. A hearing was held on 10 November 2009 before RC Magistrate Davis and recorded on four magnetic audio cassettes which were later independently and separately transcribed by Dr. Faltas and by COMPUSCRIPTS which Weiss hired for that.

On 17 November 2009, Blanton prepared a "case summary" for CPD's then-Chief Tandy Carter ("CPD's Carter") to approve Dr. Faltas' arrest for harassment in the first degree. That day, Dr. Faltas also appeared at CMC for her jury trial on the "simple assault" charge but then-Columbia Assistant City Attorney ("CACA") David A. Fernandez ("CACA Fernandez") declined to call the case and instead claimed the hearing was set to give Dr. Faltas discovery. After three false pretenses by CACA Fernandez that Dr. Faltas had already been handed discovery, and two threats of contempt-of-court pronouncements by CMC's Marion Oneida Hanna ("CMC's Hanna"), Dr. Faltas was handed few papers which did **not** include Blanton's case summary or her investigation of Crouch's prior criminal history.

Dr. Faltas was arrested by CPD and Blanton on 2 December 2009 on two *later-**objectively-proven** pre-known false* harassment charges warrants, one pretended by Landlady Steele, the other by Ingram. Indictments issued mid-January 2010 and the General Sessions ("GS") trial *for both indictments* was set for 22-26 February 2010; but Weiss insisted on calling only the case pretended by Ingram. Dr. Faltas ably defended *pro se* and called Landlady Steele, LMW, Jones, and one Cory Lamont Curry ("Curry") (all listed but not called Weiss as prosecution witnesses) as hostile witnesses for Dr. Faltas. The jury hopelessly deadlocked, causing then-presiding SC Circuit Judge Clifton Newman ("Judge Newman *père*") to declare mistrial.

On 3 March 2010, Dr. Faltas appeared at CMC before then-CMC's DeAndrea Gist Benjamin ("Jurist Benjamin") and complained, in CACA Fernandez' presence, of incomplete discovery in the cases pending against Dr. Faltas in CMC. Though the 3 March 2020 hearing was later transcribed, CACA Fernandez had, *in writing in April 2010,* **denied it had even occurred.**

Both first-degree harassment charges against Dr. Faltas were, thank God, *dismissed with prejudice* on 13 August 2012, but only after Dr. Faltas had been subjected to more brutal arrests and contempt pronouncements to thwart her efforts for speedy retrial or dismissal.

Also, in Dr. Faltas' 2 December 2009 bond hearing, Weiss admitted she advised *the* City to withhold trial on the simple assault charge against Dr. Faltas lest an acquittal causes Landlady Steele's charge of harassment against Dr. Faltas to crumble. The "simple assault" case against Dr. Faltas was not called for trial until 25 April 2013, and **then only after then-SC-Chief-Justice Toal ("Jurist Toal") *in her administrative capacity* issued her 7 March 2013 for all Dr. Faltas' CMC cases to be brought to "expedient" resolution by then-CMC's Carl L. Solomon ("Attorney Solomon").** That 7 March 2010 ORDER *followed* Dr. Faltas' *federal* applications for speedy trial of the charges pending against her in CMC, which applications were dismissed *without prejudice* purportedly to allow exhaustion of state remedies.

By April 2013, all three of her tenants listed by Landlady Steele as eyewitnesses to the simple assault had been extra-judicially evicted from the Byron quadriplexes; **but only Crouch had compelling need to return there: she was receiving regular payments from Byron quadriplexes' then-tenant Charles Randolph White ("Charlie White") of $300.00/month either for sexual services as a prostitute (Dr. Faltas' theory) or to "clean" Charlie White's one-bedroom apartment.** Also Jones and Ingram had been thoroughly discredited in and after Dr. Faltas' 22-26 February 2010 GS trial. **But in 2012, Crouch had been arrested for sexual battery on a**

vulnerable adult, functionally equivalent to a child, which occurred *circa* Christmas 2011 and for which Crouch pled guilty (invoking the drunkenness excuse) on 11 July 2013, SC 5th JC case I902825 (assault and battery, 2nd degree). Also on April 2012, Crouch was arrested for public drunkenness *in the Byron quadriplexes* and put on notice to not return there. A conviction of Crouch was entered in CMC on 18 May 2012 **but never *to this day* reported to SLED or placed on RC's Public Index.** One beneficial-to-Crouch result of that *artificial* absence, **not expungement,** of *that* conviction of hers is that, during her 11 July 2013 sentencing for the Christmas 2011 assault and battery, 2nd degree, Crouch's "priors" did not include it.

And the continuing *artificial* absence of that conviction from that conviction of Crouch's from the public records, **even after then-CMC-Chief Turner's 21 January 2014 letter to Dr. Faltas acknowledging that conviction's existence *and copied to SC Circuit Judge Lee, to jurist Toal, and to then CACA Fernandez,*** strongly indicates that artificial absence was not inadvertence but prosecutorial-misconduct reward to Crouch for her false testimony against Dr. Faltas.

At the inception of Dr. Faltas' 25 April 2013 trial, Crouch and then-CACA Fernandez misrepresented to the court that Crouch's 22 April 2012 public drunkenness charge was **"still pending."** That was after-trial-discovered to be ***objectively false*** as there had been a guilty disposition of it 11 months earlier. Also at the inception of Dr. Faltas' 25 April 2013 trial, Crouch and then-CACA Fernandez misrepresented to the court that Crouch **"has no idea"** about her assault and battery, 2nd degree, charge. That, too, was after-trial-discovered to be ***objectively false*** as Crouch had, from June 2012 and March 2013 filed motions in **SC 5th JC case** I902825.

Also, Dr. Faltas' then-forced lawyer Theodore Nichols Lupton ("Ted Lupton") had, well ahead of Dr. Faltas' 25 April 2013 trial sent then-CACA Fernandez Rule 5/*Brady* requests including "all results of all physical and mental examinations of persons related to this prosecution."

No medical, psychological or psychiatric reports on Landlady Steele were produced. Nor had Weiss, in discovery in the harassment cases, given Dr. Faltas Landlady Steele's purported "victim impact statement" which admitted, *over Landlady Steele's own signature,* that she did not suffer medical or emotional effects and needed no medical attention. **Dr. Faltas first saw that document in November 2010 but has *to this day* been denied a copy of it.**

In Dr. Faltas' 25 April 2013 trial, Landlady Steele blurted **"I am *still* on medication *for this*."** Which caused Dr. Faltas to gasp audibly. Again, *to this day,* Dr. Faltas is denied discovery on who, if anyone, prescribed medication to Landlady Steele and on whether it was "for this" or for other stresses in Landlady Steele's life, including her living with LWM, whose wife, Ella Faye Kizer Mason, died in 1993 by gunshot wound to the head fired in LWM's presence and from his gun, and whose first-born son, Richard Wayne Mason ("RWM") died in April 2016 *in Landlady Steele's presence* of a gunshot wound to the head also fired from LWM's gun, and whose second-and-last-born son, Christopher James Mason ("CJM") died in 2022 of causes apparently related to cocaine addiction after having been incarcerated in December 2021 for cocaine possession. **Although LWM almost contemporaneously *publicized* RWM's purported suicide in a medical malpractice suit by LWM against RWM's psychiatrist, Dr. Faltas was *emphatically* prevented from asking Landlady Steele any questions about the effect on her emotions and need for medication of RWM's having lived and died in her home.** To the contrary, Landlady Steele insisted she will *return* to medication *solely* for having *seen* Dr. Faltas at the 4 February 2019 SC Crim R 29(b) hearing. **But Dr. Faltas was not allowed to follow up or argue the extreme incredibility of emotional distress claims by Landlady Steele.**

IN SUM: Weiss' and then-CACA Fernandez' acts and omissions to make at least one criminal charge by Landlady Steele "stick" against Dr. Faltas after she had been exonerated of all other

Steele-caused charges ("the City needs a conviction [of Dr. Faltas]" then-CACA Fernandez had written to Ted Lupton in February 2013), are jointly-attributable *Brady* violations.

Without the improperly-withheld *Brady* material, the Prosecution falsely portrayed Landlady Steele as a long-suffering victim of Dr. Faltas pushed to "breakdown" and "medication" and falsely portrayed Crouch as a person of good character with "no dog in this fight" but testifying only for the sake of truth. CMC's Solomon *expressly* relied on Crouch's testimony.

In the new light of the after discovered evidence, and had *Brady* material been timely given to Dr. Faltas, the whole true picture of Landlady Steele as one who had suborned her then-tenants to commit perjuries against Dr. Faltas, who was nonetheless, thank God, fully exonerated of the other criminal charges Landlady Steele had tried to frame Dr. Faltas in. The whole true picture of Landlady Steele as, at best, an extreme exaggerator, would have emerged. And far from Crouch as a disinterred honest bystander, her true picture of a habitual drunkard, sexual molester, and possibly prostitute, would have emerged. Landlady Steele had the power to prevent Crouch from returning to the Byron quadriplexes **even if Charlie White on-and-off wanted Crouch there; *or at the very least, Crouch believed Landlady Steele had that power.*** Crouch had a strong incentive to curry Landlady Steele's favor and trade for permission to return to the Byron quadriplexes for the $300.^{00}$/month Charlie White paid Crouch for whatever on-site services. Crouch was and still is without a high-school degree and with substance addictions, criminal histories, and eviction histories. Charlie White's money and Landlady Steele's indulgences were essential to Crouch's survival. **With all the improperly withheld or lied-about facts brought to light, no reasonable fact-finder would have credited Landlady Steele's victimhood story.** But the standard is not even as demanding as that, **all that is required is for confidence in the conviction to be undermined.**

Introductory but Necessary *Example* of Dr. Faltas' *Previous* Advocacy and Conduct

Before *reflexively* dismissing Dr. Faltas' novel arguments as "frivolous and vexatious" this Court is invited to compare this excerpt from the transcript of the end of the 22-26 February 2010 GS jury trial, Judge Newman *père* presiding with subsequent case law:

[17 - 18] **(Whereupon, the jury was brought into open court at 9:46 p.m.)**

[19 - page 72, line 13] The Court: Ladies and gentlemen, Mr. Foreman, you have sent out a note stating, " We are deadlocked with no hope of reaching a unanimous decision." And certainly, as I instructed you earlier, the verdict of the jury must be unanimous. Now, when a matter is in dispute, any matter for that matter, it isn't always easy to -- for even two people to agree. So when 12 people must agree, it obviously becomes even more difficult. In most cases, absolute certainty cannot be reached or even expected. However, you have a duty to make every effort to reach a unanimous verdict. In doing this, you should - and I'm sure you have - but you should consult with one another, expressing your own views, and listen to the opinions of your fellow jurors. Tell each other how you feel and why you feel that way. Discuss your differences with open minds. Although the verdict of the jury must be unanimous, every one of you has the right to your own opinion. The verdict you agree to must be your own verdict, the result of your own convictions, and you should not give up your firmly held beliefs merely to be in agreement with your fellow jurors. The majority should consider the minority's opinion. The minority should consider the majority's opinion and position. You should carefully consider and respect the opinions of each other and reevaluate your opinions and your position for reasonableness, correctness, and impartiality. You must lay aside all outside matters and reexamine the questions before you based on the law and the evidence in this case. If you do not agree on a verdict in this case, I must declare a mistrial. In that case, it does not mean that anybody wins. It just means that at some future time I, or another judge, will try this case with some other jury sitting where you now sit. The same participants will come and the same questions will basically be asked and get the same answers -- basically get the same answers and we'll have to go through this whole process again. You were selected in the same manner and from the same source as any future jury will be selected from, and there is no reason for me to suppose that 12 more intelligent, impartial, conscientious, or competent jurors than you can be found or selected or that more clearer -- more or clearer evidence will be produced by one side or the other. I, therefore, ask that you return to your deliberations **with the hope that you can arrive at a verdict** within a reasonable time. Please return to the jury room.

[14 - 15] **(Whereupon, the jury was excused from open court to continue deliberating at 9:52 p.m.)**

[16 - 17] The Court: Any exceptions to the charge from the State or the defense?

[18] Ms. Weiss: No, Your Honor.

[19-21] Dr. Faltas: Your Honor, I don't think they were charged that if they still cannot agree they may so report to the Court.

[22 - 24] The Court: I said within a reasonable time, and they must determine what a reasonable time is. I cannot give a time period on the deliberations of the jury.

[25 – page 75, line 3] **Dr. Faltas: But I was saying that I don't think they were told that they still have the option of being deadlocked.**

[3 - 5] The Court: I can't give the jury a time limit. I give them a reasonable time, and that's for the

jury's determination what a reasonable time is.

[6] **Dr. Faltas:** I understand.

[7 – 10] **The Court:** I understand. I understand your exceptions of what you want me to tell them, the words you would like for me to use, and what you would tell them if you were in my position.

[11] **Dr. Faltas:** And I'm not the judge. There is---

[12 – 23] **The Court:** I have given them the *Allen* charge which is the approved charge using the approved wording, for the most part stating it to them verbatim from the *Allen* charge script that I was looking at as I was talking to them. And the Court will never tell the jury that you have a half an hour to make a decision or the case is going to mistrial or an hour or any specific time limit. We have 12 intelligent, impartial, conscientious, and competent jurors back there who have heard what I've told them, and if they're unable to reach a verdict within a reasonable time, they will be the very first to let me know, and I'm confident about that.

[24 – page 76, line 1] **Dr. Faltas:** I'm sorry, Your Honor. Just to put it on the record, I don't think they were told that they have the option of coming back without a verdict.

[2 – 8] **The Court:** Right. You're exactly right. **They were not told that** they have an option of not deciding **because they have a duty to decide,** and if they can't decide, then I must declare a mistrial. That's what I told them, and that's what the law is. I understand your position, and it's well stated in the record as she transcribes any and everything that is stated in court.

[9] **Dr. Faltas:** Thank you, Your Honor.

[10 – 11] **The Court:** You're welcome. And with that, we'll be at ease waiting on the jury.

[12] **Ms. Weiss:** Thank you, Your Honor.

[page 76, lines 13 – 15] **(Pause in proceedings while the jury continues to deliberate. Court's Exhibit 7 was marked for identification only.)**

[16 – 17] **The Court:** The note says, "This jury cannot come to a unanimous verdict." What says the State?

[18 – 21] **Ms. Weiss:** Your Honor, I think -- I mean, you can talk to the jury, but I believe at this point the instructions are pretty clear. We can't send them back, so we have to do what we have to do.

[22 – 23] **The Court:** All right. All right. What says the defense?

[24 – 25] **Dr. Faltas:** Yes, Your Honor, I am agreeable to a mistrial, and I thank Your Honor for doing that.

[page 77, line 1] **The Court:** All right. If you'll bring the jury.

[2 – 3] (Whereupon, the jury returned to open court at 11:15 p.m.)

[4 – 6] **The Court:** All right. Mr. Foreman, your note says, **"This jury cannot come to a unanimous verdict." Is that correct?**

[7] **Foreman:** Yes, sir. [8] **Juror:** Yes, sir.

[14 – 15] **(Whereupon, the jury was excused from the trial at 11:18 p.m.)**

[16] **The Court:** Any other matters before the Court?

[17 – 25] **Ms. Weiss:** Your Honor, at this time I would assume the bond goes back into effect since there's been no verdict? And I would just ask Your Honor to admonish the defendant – it has come to the State's attention that at least two times or at least once while out on bond she ignored the orders of the Court and still went back to the

> apartment, and I would ask Your Honor to admonish the defendant that the conditions of the bond are in place, remain in place, and that she must abide by them.

What Dr. Assa'ad-Faltas urged on 26 February 2010 at 9:52 pm SC S Ct made the law of this State in Opinion 28118, *State* v. *Rampey*, SC Appellate Case 2020-001595 (5 October 2022): a hung jury is a valid *and socially useful* conclusion of a criminal trial. What *may appear as* vexatious intransigence is *in reality* "clever and prescient" convictions of one who believes her intellectual gifts and education *are a debt to God and to her parents* ***which must be paid by improving all people and things around her.*** This Court's Opinion 5655, at advance slip p 9, astutely notes **"Also, telling the jury the case will "have" to be retried is misleading. A hung jury often acts as an alarm bell to all but the unthinking, awakening one side (sometimes both) to weaknesses in their case, which can lead to a plea deal rather than a retrial."** But it is impossible to believe SC's (or the U.S.'s) judiciary was unaware of that till then. Also, the coaxing "no 12 people who are smarter and more conscientious than you can be assembled" is a biostatistical unlikelihood, if not impossibility: **if jurors are random samples of their communities, it is unlikely, if not impossible, that *every time* a jury deadlocks, that jury was drawn from the *extreme* (not average) end of the intelligence Bell curve of the county.**

SC S Ct has so far reacted to Dr. Assa'ad-Faltas' scientific ideas and studies by denying her *basic human right* to speak for herself and her civil right to equal access to the courts, and by incarcerating her in a facility *pre-known* unsafe for her. **This Court should categorize *City of Columbia* v. *Assa'ad-Faltas* (SC S Ct Opinion 27723) with *Plessy, Korematsu,* and *Roe,*** and stop quoting it as if it had been revealed by God on Mount Sinai but read Dr. Faltas' arguments in this *provisional* brief with an open, conscientious, and independent minds.

ARGUMENTS

STANDARDS OF REVIEW

Review on all the issues should be *de novo.* Even on the issues where Respondent *might* urge review is for abuse of discretion, Dr. Faltas urges that any exercise of discretion below was controlled by errors of law and such errors should be reviewed *de novo.*

Brief Citations of Authorities on the Issues Presented.

On *the* City's non-sovereignty, the U.S. Constitution's "no-new-state" clause, ***Jinks v. Richland County,* 538 US 456 (2003), and *U. S. Term Limits, Inc., et al.* v. *Thornton et al.*,** 514 U.S. 779, 838-9, (1995):

> Federalism was our Nation's own discovery. The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other. The resulting Constitution created a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it. It is appropriate to recall these origins, which instruct us as to the 839*839 nature of the two different governments created and confirmed by the Constitution.

Clearly, the U.S. Constitution "split the atom of sovereignty" only two ways," not more. Also, **State v. Long, 406 SC 511, 753 S.E.2d (2014), and** *In the Matter of RICHLAND COUNTY MAGISTRATE'S COURT,* **389 S.C. 408 699 S.E.2d 161 (2010).**

On *Brady* violations implicating *federal* due process rights, Dr. Faltas cites *Kyles v. Whitley,* 514 U.S. 419, 434, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995) ("To make that determination, this Court 'evaluate[s]' the withheld evidence 'in the context of the entire record.' *United States v. Agurs,* 427 U.S. 97, 112, 96 S.Ct. 2392, 49 L.Ed.2d 342.") *Smith* v. *Cain,* 565 US 73, (2012), *Wearry v. Cain,* 577 U.S. 136 S.Ct. 1002 (2016), *Turner* v. *US,* 137 S. Ct. 1885 (2017), and *Bowman* v. *Sterling,* 45 F.4th 740 (4th Cir. 2022), and their ancestry and progeny.

On preemption, Dr. Faltas submits that the 2010 enactment of § 16-3-600 (E)(3), SC Code of

Laws, preempted *and voided* the City's vague and overbroad ordinance. Section16-3-600 (E)(3) neither increased punishment for an offense known in common law, statute or ordinance, nor created an offense unknown before September 2009; and thus did not violate the proscription of *ex post facto* laws. Rather, it codified SC's legislature's determination that *henceforth* no one in this State "shall be punished" for assault or battery *unless* (s)he actually "unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so." SC's Legislature's acting to define "assault and battery in the third degree" represents a finding that, theretofore, sundry ordinances (including the City's definition-less ordinance) or common law did not give clear notice and/or resulted in denial of equal protection throughout the State. Declarations of *substantive* rights are **always** retroactive. *Edwards* v. *Vannoy,* 593 U.S. _ slip opinion at 19-20 (2021).

Dr. Faltas further incorporates herein by reference **all her arguments and citations** in her notice of appeal and preliminary grounds in 2019-CP-40-01374 and in her *timely* 22 February 2022 *pro se* Rule 59(e) to reconsider in that case. She also incorporates herein by reference her transcribed oral arguments to SC Circuit Judge D. Craig Brown on 28 January 2022 and on 31 March 2022 (when the transcript of the latter hearing is received).

CONCLUSION

Dr. Faltas' 25 April 2013 conviction and sentence in CMC should be reversed.

Certificate of Service Satisfying the *Substance* of Form 7 and of all Relevant Rules, SCACR

On 21 October 2022, I served Mr. Marshall James, sole Counsel for sole Respondent in this case, with a true copy of this document by personally going to the the City of Columbia's Legal Department's office location on Washington and Main Streets, Columbia, SC 29201, and there and then hand-delivering the true copy of this document to ~~a person long known~~ to me to be approved and entrusted to deliver it to Mr. Marshall, all God so willing.

s/Marie Assa'ad-Faltas, MD, MPH, Defendant/Appellant, here server *pro se*
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