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 AMENDED *PROVISIONAL* INITIAL BRIEF

TIMELY Submitted in RESPONSE TO this Court's Clerk's 12 October 2022 Letter *MISTAK-ENLY* Alerting Appellant to Overdue Initial Brief and Designation of Matter.

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

Other Counsel of Record:
Marshall Schumpert James, Esq.,
Counsel for Respondent, the City of Columbia, SC ("*the* City")
City of Columbia, Legal Dept.
PO Box 667, Columbia, SC 29202
Email: marshall.james@columbiasc.gov
Phone: (803) 737-4230 Ext

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1. 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, *etc.*) are not sovereigns nor do they partake of state's sovereignty. Only sovereigns may criminalize conduct and prosecute and punish crime. The conviction below is void *ab initio* because City of Columbia, SC ("*the* City"), a non-sovereign, may not own or operate a court. *The* City's Municipal Court ("CMC"), which is not a court of a sovereign recognized by the U.S. Constitution, was created by a statute repugnant to the U.S. Constitution; thus, all its actions, including the conviction of Appellant Marie Assa'ad-Faltas, MD, MPH ("Dr. Faltas") are as if they did not exist. **An answer in Dr. Faltas' favor on this issue obviates the need for this Court to resolve the other issues.**

2. Dr. Faltas was convicted and sentenced under a City ordinance of *the* City pre-empted by state law. Laws which exempt a class of people or of conduct from prosecution or punishment are always retro-active. 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. A punishment which denies the *basic* human right to speak for oneself is cruel and unusual and thus unconstitutional and void. Therefore, 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. *Brady* violations deny due process to a criminal defendant. "Disfavor" of reopening criminal conviction due to after-discovered evidence which had been withheld in violation of *Brady* is plain error because it **"disfavors" due process itself. 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. *All* adjudicators below had personal interests against Dr. Faltas. **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. South Carolina's ("SC") magistrate courts have no power to issue *subpoenae duces tecum*. Dentsville Magistrate Newsom ("DMN") refused **both** Dr. Faltas' request to return 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. 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.**

7. 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 right to *fully* confront (and *fully* impeach) a witness testifying against that same criminal defendant. 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.**

8. 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*** *ssthe power of a landlady to issue and enforce* trespass notices. **If this issue is reached, this case should *initially* be heard *en banc* to harmonize conflicting decisions and give guidance.**

9. 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. **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 refusing to see the whole case *in the new light* of the *cumulative effect* of the after-discovered evidence. **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. 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.***

12. Governments have no *legitimate* interest in finality of unconstitutional convictions. Once a conviction *appears* unconstitutional, the speediest approach to relief should be taken.

13. 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 judges of this Court, whether *en banc* or in the panel eventually assigned to adjudicate this case, should apply conscientious scrutiny and independent review of the arguments and facts.

Introductory *Summary* of the Statement of the Case

At 7:11 pm on 11 September 2009, Dinah Gail Steele ("Landlady Steele," "Steele" or "Landlady"), owner of two rental quadriplexes at 300 and 304 Byron Road, Columbia, SC 29209, ("the Byron quadriplexes"), called 911 claiming Dr. Faltas is on trespass notice from the Byron quadriplexes but "came over" and "harassed" and "pushed on" Steele "again."(Transcript of 25 April 2013 trial ["2013-04-25 Tr."] p 25 = Record on Appeal ["RoA"] _) Columbia's Police Department ("CPD") arrived later, took a report (RoA _), and told Steele to take a courtesy summons against Dr. Faltas for "simple assault" per City ordinance 14-31: **"It shall be unlawful for any person to commit an assault and battery or in any manner whatever to engage in any combat or fight in a private or public place within the corporate limits of the city."**

Steele listed *claimed* as eyewitnesses three then-Byron-quadriplexes tenants: 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"). Steele became "livid" that CPD did not arrest Dr. Faltas there and then (2013-04-25 Tr p 32, lines 6-7 = RoA p) 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, she also got a stay of eviction pending appeal of a summary judgment entered on 1 October 2009 by Richland County, SC, ("RC") Magistrate Stroman. (Transcript Alvin S. Glenn Detention Center ["ASGDC"] 2 December 2009 bond hearing ["2009-12-02 Tr."] at pp/minutes = RoA pp/minutes).

Thereupon, Steele egged CPD to bring the more serious first-degree harassment charges against Dr. Faltas. CPD assigned 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"), (RoA _). Weiss/Blanton advised Steele to obtain restraining orders against Dr. Faltas, probably 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) Steele, (2) her consort Larry Wayne Mason ("LWM"), (3) Jones, and (4) Ingram. RC Magistrate Davis held a hearing on 10 November and recorded on four magnetic audio cassettes later separately transcribed by Dr. Faltas and by COMPUSCRIPTS which Weiss hired for that. (RoA _)

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 first-degree harassment. (RoA _) That day, Dr. Faltas also appeared at CMC for her jury trial on the "simple assault" charge. (Transcript of CMC 17 November 2009 event ["2009-11-17 Tr."] = RoA) 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. *Id.* at pp _.

Dr. Faltas was arrested by CPD and Blanton on 2 December 2009 on two ***later-objectively-proven*** *pre-known false* harassment warrants, one pretended by Steele, the other by Ingram. (RoA _) Indictments issued mid-January 2010 (RoA _); and the General Sessions ("GS") trial *for both indictments* was set for 22-26 February 2010 (RoA _); but Weiss insisted on calling only the case pretended by Ingram. *Id.* Dr. Faltas ably defended *pro se* and called Steele,

LWM, Jones, and a Cory Lamont Curry ("Curry") (all four listed but not called by 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. (Transcripts of 22-26 February 2010 GS jury trial ["2010-02-(day) Tr"] = RoA _).

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, (CMC 3 March 2010 transcript ["2010-03-03 Tr."] = RoA _) CACA Fernandez had, *in writing in April 2010,* **denied it had even occurred.** (Fernandez Fax, RoA _)

Both first-degree harassment charges against Dr. Faltas were, thank God, *dismissed with prejudice* on 13 August 2012, (RoA _) but only after having been *incorrectly* remanded over Dr. Faltas' objection to CMC, and after she had been subjected to more brutal arrests and contempt pronouncements to thwart her efforts for speedy retrial or dismissal. (RoA _) Also, in Dr. Faltas' 2 December 2009 bond hearing, Weiss admitted she advised *the* City to withhold trial on Steele's simple assault charge against Dr. Faltas lest an acquittal causes Steele's charge of harassment against Dr. Faltas to crumble. (2009-12-02 Tr p/minutes = RoA p/minutes) 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") (RoA p _).** 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 Steele's tenants she had listed 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") for sexual services as a prostitute (Dr. Faltas' theory) or to "clean" Charlie White's one-bedroom apartment (Crouch's pretext)** (Charlie White's 2007 complaint against Crouch [RoA _], Charlie White's 17 March 2011 audio-recorded testimony [media RoA _], and Crouch's testimony in 4 February 2019 hearing before DMN ("2019-02-04 Tr.") pp 89-94 = RoA _). 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 a 23 December 2011 sexual battery on a vulnerable adult, functionally equivalent to a child, for which Crouch pled guilty (invoking the drunkenness excuse) on 11 July 2013, SC 5th JC case** I902825 (assault and battery, 2nd degree). (RoA _) Also on 22 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. (RoA _)** Crouch benefited from that *artificial* absence, **not expungement,** from the public record of *that* conviction; ***e.g.***, during her 11 July 2013 sentencing for the 23 December 2011 assault and battery, 2nd degree, her "priors" did not include it. (Crouch's 11 July 2013 GS plea and sentence transcript p 8-9 = RoA _) *Persistent* absence of Crouch's public drunkenness conviction from *public* records, ***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* (RoA pp _),** proves the absence was not and is not inadvertence but is a prosecutorial-misconduct reward from *the* City to Crouch for her false testimony against Dr. Faltas.

At the start of Dr. Faltas' 25 April 2013 trial, Crouch and then-CACA Fernandez represented to CMC that Crouch's 22 April 2012 public drunkenness charge was **"still pending."** (2013-04-25 pp 6-7 = RoA _) That was after-trial-discovered to be ***objectively false*** as there had been a guilty disposition of it **on 18 May 2012**. Also at *id.*, Crouch and Fernandez represented to CMC 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 to March 2013 filed motions in **SC 5th JC case** I902825 (RoA _). 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." (RoA pp _) **No medical, psychological or psychiatric reports on Steele were produced.** Nor had Weiss, in discovery in the harassment cases, given Dr. Faltas Steele's purported "victim impact statement" which admitted, *over Steele's own signature,* that she did not suffer medical or emotional effects and needed no medical attention. **Dr. Faltas first saw that document on 12 November 2010 but has *to this day* been denied a copy of it.** (Audio and *partial* transcript of Dr. Faltas reviewing "two banker's boxes" at CMC = RoA media and _)

In Dr. Faltas' 25 April 2013 trial, Steele blurted **"I am *still* on medication *today*."** (2013-04-25 Tr p 21, lines 1-9, = RoA p _) (which caused Dr. Faltas to gasp audibly) and insisted it is "because of this." (2013-04-25 p 29 = RoA _) Again, *to this day,* Dr. Faltas is denied discovery on who, if anyone, prescribed medication to Steele and on whether it was "because of this" or for other stresses in Steele's life, including her living with LWM, whose second wife, Ella Faye Kizer Mason, died in 1993 by gunshot wound to the head fired in LWM's presence and from his gun, (RoA _), whose first-born son, Richard Wayne Mason ("RWM") died in April

2016 *in Steele's presence* of a gunshot wound to the head also fired from LWM's gun (RoA _), and whose younger 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 (RoA _). **Although LWM almost contemporaneously *publicized* RWM's purported suicide in LWM's medical malpractice suit against RWM's psychiatrist (RoA _), 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.** (2019-02-04 Tr pp 35-7 = RoA _) Steele insisted she will *return* to Paxil *solely* for having *seen* Dr. Faltas at the 4 February 2019 SC Crim R 29(b) hearing. *Id.* at Tr. p 85, lines 20-21 = RoA _. **But Dr. Faltas was not allowed to follow up or argue the utter incredibility of emotional distress claims by Steele *which* supposedly *lasted four years* under medical supervision.**

IN SUM: Weiss' and then-CACA Fernandez' acts and omissions to make at least one criminal charge by 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-and-severally attributable *Brady* violations.

Without the improperly-withheld *Brady* material, the Prosecution falsely portrayed Steele as a long-suffering victim of Dr. Faltas pushed to "nervous breakdown" and "medication" and falsely portrayed Crouch as a person of good character with "no dog in the fight" (2013-04-25 Tr p 88 = RoA _) but testifying only for the sake of truth. CMC's Solomon *expressly* relied on Crouch's testimony and penalized Dr. Faltas for doubting it. *Id.* at pp 127-8 = RoA _.

In the new light of the after discovered evidence, and had *Brady* material been timely given to Dr. Faltas, the whole true picture of Steele as one who is herself a liar (or, at best, an *extreme* exaggerator) and who had suborned her then-tenants to commit perjuries against Dr.

Faltas (who was nonetheless, thank God, fully exonerated of the other criminal charges Steele had tried to frame Dr. Faltas in) would have emerged. And far from Crouch as a disinterred honest bystander, her true picture of a habitual drunkard, sexual molester (likely 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 had that power.*** Crouch had a strong incentive to curry Landlady's favor and trade for permission to return to the Byron quadriplexes for the money Charlie White paid Crouch for whatever on-site services. Crouch has only an 11th grade education (2013-07-11 Tr p 2 = RoA _), substance abuse issues (*id.* at 11-12 = RoA _), criminal convictions (including grand larceny RoA _), and eviction records. Charlie White's money and Landlady Steele's indulgences were essential to Crouch's survival. **With all the improperly-withheld/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,[1] Judge Newman *père* presiding, with subsequent case law:

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[1] Like everything else related to the false charges underlying that trial, the Prosecution violated Dr. Faltas' rights at every turn, including *initially* ordering "bits and pieces" of the transcripts of the 22-26 February 2010 trial. When Dr. Faltas later, *at her own expense,* ordered the missing parts, the court reporter *refused to re-number the pages in their chronological order* and wanted to charge Dr. Faltas for the 750 already-transcribed pages *again* for them to be renumbered in sequence to the transcripts of the 22 and 23 February 2010 pre-trial motions, jury selection, and opening statements transcripts. Therefore, this excerpt is from a stand-alone transcript of the post-testimony motions, the closing arguments, the jury charges, the *Allen* charge, and the mistrial declaration. Though it starts at page 1, it really follows the 1,076 *chronologically* preceding pages.

[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. Faltas urged on 26 February 2010 at 9:52 pm became this State's case law in Opinion 28118, *State* v. *Rampey*, SC Appellate Case 2020-001595 (5 October 2022): **a hung jury is a valid *and socially useful* result of criminal trial.** Three years earlier, this Court's *State* v. *Taylor*, 427 S.C. 208, 219, 829 S.E.2d 723 (2019), had astutely noted, **"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."** SC S Ct granted the State's *certiorari* petition and heard oral arguments, but dismissed as improvidently granted ("DIGed"), 430 S.C. 366, 845 S.E.2d 210 (2020), only to return to the issue in *Rampey, supra.* By then, Charles Brandon Rampey, *the human being,* had served **almost all of his sentence from an unconstitutional conviction.**

Dr. Faltas had **previously** compiled for SC S Ct *two* scholarly *statistical* studies: one shows 12% of that court's *total* work wasted on "DIGs" and suggests *mathematical markers* to filter out *before certiorari* grants cases likely to be DIGed; the other shows that *appeals by the State* from PCR grants by the circuit court **of from this Court's reversals of PCR denials** *also* result in wasted appellate work **and deny speedy *retrial* to criminal defendants** who got "PCR-cleansed" of the unconstitutional conviction and stood presumed innocent again.

Parenthetically, it must have been always known that retrials rarely follow hung juries (*e.g.,*

all harassment charges against Dr. Faltas were **three years later** dismissed ***with* prejudice**). Also, the coaxing "no 12 people who are smarter and more conscientious than you can be assembled" is biostatistically false: **if jurors are random samples of their communities, it is unlikely that *every time* a jury deadlocks, it happens to have been drawn from the *upper* (not average) end of the intelligence Bell curve of the county.** But judiciaries gave, as if talismans, "misleading" iterations of the *Allen* charge, **to the damage of criminal defendants who suffer unconstitutional convictions.** Without false humility, Dr. Faltas has acquired a perspective **no jurist can acquire and continue to sit: that of the falsely-accused criminal defendant.** She tried to offer SC S Ct the fruit of her scientific approach combined with her bitter experience. What *may appear as* vexatious intransigence is *in reality* "clever and prescient" sincere belief that Dr. Faltas' intellect and education *are a debt to God and to her parents* ***which must be paid by improving all people and things around Dr. Faltas.*** SC S Ct has so far reacted to 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 read Dr. Faltas' arguments in this *provisional* brief, novel and unprecedented as they may be with open minds, assured that Dr. Faltas has *often* been *proven* ahead of the law and has many instances of successful *pro se* advocacy.

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.*

First Issue: What is not a *real* court can never have jurisdiction.

Lack of jurisdiction may be raised any time; Dr. Faltas preserved her challenge to CMC's existence at CMC (2013-04-25 Tr pp 117-18 = RoA _) and in all subsequently-permitted *fora.*

U. S. Term Limits, Inc., et al.* v. *Thornton et al., 514 U.S. 779, 838-9 (1995), held:

> 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. Under the Supremacy and the "no-new-state" Clauses of the U.S, Constitution, **a state has no power to *further* "split the atom of sovereignty"** without splitting *itself* into smaller states *but only with Congress' consent.* Thus, *Jinks v. Richland County,* 538 US 456 (2003), **unanimously held that political subdivisions do NOT partake of state's sovereignty.** Any act bestowing sovereign powers to criminalize conduct/prosecute crime on *the* City is unconstitutional; *e.g., Swicegood* v. *Thompson,* 435 SC 63, 65, 865 SE2d 775 (2021):

> **"See *Norton* v. *Shelby Cnty.*, 118 U.S. 425, 442 (1886) ('An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; . . . it is, in legal contemplation, as inoperative as though it had never been passed.'); *Bergstrom* v. *Palmetto Health All.*, 358 S.C. 388, 399, 596 S.E.2d 42, 47 (2004) ('Generally, "when a statute is adjudged to be unconstitutional, it is as if it had never been."' (quoting *Atkinson* v. *S. Express Co.*, 94 S.C. 444, 453, 78 S.E. 516, 519 (1913)))).**

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),** emphasized that only a sovereign may prosecute crime. Therefore, Dr. Faltas' conviction of simple assault and 20-day sentence were void *ab initio* for having been entered by CMC which is not a court of a sovereign recognized by the U.S. Constitution.

Second Issue: Preemption.

Even if CMC were *arguendo* a court permitted by the U.S. Constitution and SC statutes not repugnant to it, 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. Thus, it did not violate the proscription of *ex post facto* laws. Rather, it codified SC's legislature's intent 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** retro-active. *Edwards* v. *Vannoy,* 593 U.S. _ slip opinion at 19-20 (2021).

Third Issue: *Basic* Human Right to Speak for Oneself.

This is as "self-evident" as the right to Liberty is in the Declaration of Independence.

Fourth Issue: To "disfavor" remedies to *Brady* violations is to disfavor Due Process itself.

Any opinion/ruling expressly "disfavoring" a new trial based on evidence discovered after *Brady* violations is *ipso facto* controlled by an error of law and should be overruled ***at the earliest* possible judicial proceeding.** *Brady* violations implicate *federal* due process rights; therefore, this Court is bound by *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.

Fifth Issue: Federal recusal standard controls to protect *federal* Due Process rights.

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. **The more recent and now-controlling standard is *Caperton* v. *A.T. Massey Coal Co., Inc.* et al., 556 U.S. 868 (2009):**

> **The inquiry is an objective one. The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is "likely" to be neutral, or whether there is an unconstitutional "potential for bias."**
>
> III * * * * *
>
> That temptation, Caperton claims, is as strong and inherent in human nature as was the conflict the Court confronted in Tumey and Monroeville when a mayor-judge (or the city) benefited financially from a defendant's conviction, as well as the conflict identified in Murchison and Mayberry when a judge was the object of a defendant's contempt.
>
> **Nor do we determine whether there was actual bias.**
>
> Following accepted principles of our legal tradition respecting the proper performance of judicial functions, judges often inquire into their subjective motives and purposes in the ordinary course of deciding a case. This does not mean the inquiry is a simple one. "The work of deciding cases goes on every day in hundreds of courts throughout the land. Any judge, one might suppose, would find it easy to describe the process which he had followed a thousand times and more. Nothing could be farther from the truth." B. Cardozo, The Nature of the Judicial Process 9 (1921)
>
> The difficulties of inquiring into actual bias, and the fact that the inquiry is often a private one, simply underscore the need for objective rules. Otherwise there may be no adequate protection against a judge who simply misreads or misapprehends the real motives at work in deciding the case. The judge's own inquiry into actual bias, then, is not one that the law can easily superintend or review, though actual

> bias, if disclosed, no doubt would be grounds for appropriate relief. In lieu of exclusive reliance on that personal inquiry, or on appellate review of the judge's determination respecting actual bias, the Due Process Clause has been implemented by objective standards that do not require proof of actual bias. See *Tumey*, 273 U.S., at 532, 47 S.Ct. 437; *Mayberry, supra*, at 465-466, 91 S.Ct. 499; *Lavoie*, 475 U. S., at 825, 106 S.Ct. 1580. In defining these standards the Court has asked whether, "under a realistic appraisal of psychological tendencies and human weakness," the interest "poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Withrow*, 421 U.S., at 47, 95 S.Ct. 1456.
>
> It is true that extreme cases often test the bounds of established legal principles, and sometimes no administrable standard may be available to address the perceived wrong. But it is also true that extreme cases are more likely to cross constitutional limits, requiring this Court's intervention and formulation of objective standards. This is particularly true when due process is violated. See, *e.g.*, *County of Sacramento v. Lewis*, 523 U.S. 833, 846-847, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998) (reiterating the due process prohibition on "executive abuse of power ... which shocks the conscience"); *id.*, at 858, 118 S.Ct. 1708 (KENNEDY, J., concurring) (explaining that "objective considerations, including history and precedent, are the controlling principle" of this due process standard).
>
> This Court's recusal cases are illustrative. In each case the Court dealt with extreme facts that created an unconstitutional probability of bias that "'cannot be defined with precision.'" *Lavoie, supra*, at 822, 106 S.Ct. 1580 (quoting *Murchison, supra*, at 136, 75 S.Ct. 623). Yet the 2266*2266 Court articulated an objective standard to protect the parties' basic right to a fair trial in a fair tribunal. The Court was careful to distinguish the extreme facts of the cases before it from those interests that would not rise to a constitutional level. See, *e.g.*, *Lavoie, supra*, at 825-826, 106 S.Ct. 1580; *Mayberry*, 400 U.S., at 465-466, 91 S.Ct. 499; *Murchison, supra*, at 137, 75 S.Ct. 623; see also Part II, *supra*. In this case we do nothing more than what the Court has done before.

It is "constitutionally intolerable" for Dr. Faltas to have been judged by a man who had her stripped naked in front of two strangers because, without basis, DMN wondered whether Dr. Faltas carried "a bomb or what" *well* after she had *successfully* cleared the metal detector. Nor did DMN deny any of that; he only insisted that Dr. Faltas had alleged she was stripped naked *in the courtroom,* **when she had *correctly* reported it was *in the courthouse*.**

DMN's *judicial* bias against Dr. Faltas is proven by DMN's obsessive chant "there is not a shred of evidence" ***before Dr. Faltas was allowed to offer any evidence.*** DMN spent the majority of the 4 February 2019 hearing haranguing Dr. Faltas that, if her witnesses were going to testify how she was hoping for them to testify, they would have appeared without subpoenas. **And therein lie more errors of law by both DMN and Judge Brown, who affirmed DMN.**

Sixth Issue: The Sixth Amendment controls SC state court Crim. R 29(b) proceedings.

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.** That is starkly evident in in this excerpt:

[Page 5, lines 17-18] Defendant Faltas: I mean can I put it on the record as a basis?
[19] THE COURT: Sure. Yeah.
[20-21] Defendant Faltas: And there are witnesses, necessary witnesses –
[22] THE COURT: For? For the transfer?
[23 to page 6, line 5] Defendant Faltas: No, necessary witnesses for the actual rule 29(b) hearing who are from other counties. So, in this court I cannot get them; and I cannot get them *duces tecum.* [5*6] Additionally, additionally, your staff has given me hard time about subpoenaing witnesses and having been told that this hearing will just be about those two motions. And, in fact, I have an e-mail from Ms. Raquel Welch – I'm sorry, Raquel Perez, that says exactly that. It says it will just be on the motion to recuse and the motion to transfer. **And if –**
[6] THE COURT: Hold on a second. **Is that correct?** [7] **(Court confers off the record.)**
[8-10] THE COURT: **You told him it was just those two motions?** No, we've got the whole thing. **We've got a motion to reopen.** Okay. All right. **Continue with your motion to transfer.**
[11-15] Defendant Faltas: Since it is the court's own staff who told me that I think **I'm prejudiced because I haven't subpoenaed my witnesses;** and in any event, I cannot subpoena them, those of them who reside outside Richland County. **And as I said the circuit court has broader subpoena power; so, it's a matter of judicial economy.**
[16-22] THE COURT: Okay. You are well aware that I'm under the constraints of what the law is now, both appellate cases as well as the statutory cases. The only time we have the right to subpoena records is when it is statutorily provided. Given that, I cannot grant your motion to transfer. **The other thing is it was a circuit court that ordered this case sent here.** And the way the courts work, Circuit Court is here, I'm down here. If he or she –
[23] Defendant Faltas: I –
[24 to Page 7, line 6] THE COURT: Don't interrupt me. If he or she tells me I will do something, I can't say no. So, it doesn't work that way. And the [6*7] motion, the reason why they sent it back down is because the motion for a new trial is proper in the court, the level of court in which the trial was had. So, it's proper in this court for any other reason. I realize there are some limitations as far as you subpoena people outside the jurisdiction of this court. From what I've been told, you want to subpoena the sheriff –
[7] Defendant Faltas: No, sir.
[8-13] THE COURT: Yes, ma'am. You want to subpoena me; you want to subpoena our court administrator who is retired and lives in another county. Judge Kirby Shealy, you wanted to subpoena him. I am not going to let you abuse the process for folks that have nothing to do with this case. What

witnesses that are germane to your motion to reopen are not here?

[14-18] Defendant Faltas: Okay, I'll tell you; but just let me also put on the record that those people that you mentioned were related to the motion to recuse, not the motion to reopen. And you in fact faulted me for not having subpoenaed the Sheriff himself. So, all of this is related but–

[19] THE COURT: Okay.

[20] Defendant Faltas: I'll tell you who –

[21-23] THE COURT: Who are the witnesses that you want to subpoena that would – **and you've got to give me a summary of what their testimony would be.**

[23 to Page 8, line 1] Defendant Faltas: Well, yes, sir, I will but under protest --- I know – let me put it on the record please under protest that I'm not [7*8] required to give my defenses –

[2-3] THE COURT: **This is not a defense. You have the burden of proof for the motion to reopen the case.**

[4-5] Defendant Faltas: Those people have been subpoenaed last time. They did not show up but ...

[6-7] THE COURT: What evidence would you glean from those people?

[8] Defendant Faltas: I'm about to tell you.

[9] THE COURT: Well, good.

[10-11] Defendant Faltas: Okay. First of all, Theodore Nichols Lupton.

[12-13] THE COURT: **And what would he testify to that would be grounds for a new trial?**

[14-15] Defendant Faltas: He would – I need to put one other thing on the record.

[16] THE COURT: Okay. Go ahead.

[17-18] Defendant Faltas: You, said and you volunteered that you think I like the chase more than the capture. So –

[19-20] THE COURT: That's already on the record. Move on. We are talking about your witnesses.

[21 to page 9, line 2] Defendant Faltas: Because you know now when you said what would they say that would be grounds. What you are going to do is say, no, that won't be grounds; therefore, the witness is not necessary. Therefore, you haven't been prejudiced. Exactly the same process that you think I'm here not for the result, just for the [8*9] process and you will rule against me thinking that I am here just for the process because I like the chase more than the capture. And so I –

[3-4] THE COURT: Dr. **Faltas, let me stop you. If there is evidence that is after-discovered evidence that meets the litmus test to grounds for me to reopen, I have no problem at all reopening the case.**

[6] Defendant Faltas: I have no confidence in that –

[7-12] THE COURT: I understand that but let's move on. You've asked me to recuse myself a couple of times. I've denied it. **Don't go there any more.** Tell me about the witnesses that aren't here that you think ought to be subpoenaed; but you've got to tell me what they are going to say. **Just because you want to subpoena somebody doesn't mean they are germane.**

[Page 59, lines 21-22] THE COURT: We are not dealing with possibilities. You have a motion, you have the burden of proof.

[23-25] Defendant Faltas: **Sir, it's either of the two. And these are the only two plausible possibilities and both of them support my motion. I just cannot testify for someone else. I'm telling you –**

[Page 60, lines 1-7] THE COURT: And I agree with you. So, that's why I don't know whether you need to testify or not. You are basing your legal argument on what the other people might say and there's nobody here that you've called that can say anything that supports your record. **Much the same as if the state summonses a witness and they don't show up for trial. I can't make the witness show up.** Okay? **Understand that.**

[8-11] Defendant Faltas: **No, sir.** I'm sorry. **The 6th Amendment to the U.S. Constitution guarantees a criminal defendant the right to *compulsory process*, compulsory, not voluntarily, not invitational.** You are trying –

[12] THE COURT: **This is a motion. This is not your trial.**

[13-14] Defendant Faltas: **It has the same constitutional guarantees –**

[15-16] THE COURT: **Go on. You can argue that on your appeal if I rule against you.**

[17-18] Defendant Faltas: **Of course you are going to rule against me. It was obvious from the beginning.**

[19 to page 61, line 1] THE COURT: Ma'am, you say one other disrespectful thing to this court I am going to hold you in contempt. And you know I will because I've done it before. I don't want to do it t. It's a last resort. Do not push. Your disrespect for people and the system is obvious and I think if we put these people under oath that you've brought in here today, none of whom you've called by the way, if they were asked they'd agree. Now you may be respectful or you may stand down and [60*61] I'll rule with what I have at this time.

[Page 64, lines 19-20] Defendant Faltas: Could I finish my response to the objection?

[21] THE COURT: Yes, ma'am.

[22 to Page 65, line 9] Defendant Faltas: So, I (inaudible) if you are saying and I'm not sure you are saying it or not saying it that rule29(b) is cut out from the rules of criminal procedure and not subject to the 6th amendment of the united states. But the 6th amendment includes the [65] right to confront one's accuser, the right to compulsory process and also the right to a speedy trial. This matter has been going on for nine years now, going on the tenth now. But she volunteered to testify. She volunteered that she was still on medication. She is here and I am asking that I examine her. You, of course, can control the questions subject to abuse of discretion. You can control the questions but when it's something that she volunteered emphatically. Several times she said she had the nervous breakdown.

[10-12] THE COURT: **Do you have any evidence that she did not suffer a nervous breakdown condition or that she did not take medicine?**

[13] Defendant Faltas: Yes.

[14] THE COURT: **What's that evidence?**

[PAGE 127, LINES 22-23] THE COURT: **You assume but there is no evidence in the record there wasn't. Correct?**

[24-25] **A.** No, there is evidence that Charles White whom you are not exercising the compulsory —

[Page 128, lines 1-2] THE COURT: **Ma'am, don't go there. Your disrespect to the courts is noted. I don't want it again.**

[3] **A.** All right. My testimony is that Charles White told me.

[4-6] THE COURT: **Which is hearsay. And he would have been your witness and you can't testify what one of your witnesses would have been if he didn't come in.**

[7-8] **A. But there is the argument that I would have wanted the court to enforce its compulsory process.**

[11-13] THE COURT: **You made that earlier. 1 don't know how we can enforce what we don't have the same powers outside the county as other courts do.**

[14] **A.** That's why I wanted –

[15] THE COURT: **I understand. Any more testimony?**

Seventh to Ninth Issues: Full Impeachment is Integral to Right of Confrontation.

DMN was controlled by an error of law, and Judge Brown did not address, Landlady Steele's ability to trespass Steele's property Crouch *even as White's invitee.* Tr pp 89-90:

[PAGE 89, LINE 23] THE COURT: **Sustained. I don't see the relevance of other.**

[24-25] **Q.** (by **Defendant Faltas**) Did you ever get money from a man called **Charles Randolph White** for any reason?

[Page 90, line 1] **A.** I do clean up for him. I was his neighbor for years.

[2] **Q.** Did you ever have sex with him?

[3] *Ms. Mangum:* Objection, Your Honor.

[4] THE COURT: **What's the relevance?**

[5-7] Defendant Faltas: The relevance is that she needed to overrule or bypass the trespassing order to give the prostitution services to Mr. White.

[8-10] THE COURT: **Number one, I haven't seen any evidence of a trespass. And the way trespass works I can trespass you today and take it off tomorrow for any reason.**
[11-12] Defendant Faltas: Well, we'll follow that. We'll follow that.
[13-14] **Q.** (by Defendant Faltas) So, when was the last time you got money from Mr. White?
[15-17] *Ms. Mangum:* Your Honor, I object as to relevance. I believe Ms. Crouch was purportedly brought here because she lied about her criminal record.
[18-19] Defendant Faltas: And I am trying to also put evidence that she has incentive to lie now.

Judge Brown made much of the fact that it was White, not Steele, who *initially* put Crouch on trespass notice. The issues, however, are that: (a) Crouch *perceived* that Steele could put Crouch on trespass notice *even if White wanted Crouch as his invitee;* and (b) Steele has, not only power, *but duty,* to protect *other tenants* from third-party criminality. ***Wright v. PRG Real Estate Management*, 426 SC 202, 826 SE 2d 285 (2019).** Crouch testified that, when drunk that early morning, she was banging on Steele's property windows or doors. Thus, Steele would have had grounds to put Crouch on trespass notice. Parenthetically, too, Steele had put Dr. Faltas herself on trespass notice *from her own apartment.* So, Crouch could have plausibly believed, "right or wrong," that a ruthless Steele could put Crouch on trespass notice from a Steele building where Crouch was not a tenant; and, with her ever-growing criminal record, Crouch would have had no basis to claim the trespass notice was arbitrary. Another error of law by both DMN and Judge Brown are that Steele's false claims of nervous breakdown are irrelevant to Dr. Faltas' actual innocence of the simple assault conviction. Not only was "mental injury" the only injury claimed by Steele, she used it to falsely pretend that the assault was so *physically* severe as to cause her mental injury. Judge Brown is now asked to at least clarify his ruling on the relationship of Steele's claimed mental injury to the case.

Tenth to Thirteenth Issues: The New light Standard.

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.

The *real* law and its application to the facts of this case

A. The Criteria are *basically* two, not five or six, and aim to promote truth and diligence.

Finality is good; **but finalizing *injustice* is not, and cannot be, the mission of courts.** That would change temples of truth into judgment mills and end the very respect for the law which finality seeks to promote. ***The more honest a court system is about its inaccuracies, the more likely it is to favor truth over finality.*** Finality is guarded by a "could not by due diligence have been discovered before trial" criterion to induce parties to gather all necessary evidence before trial and reach truth in the first trial. The criteria are constant in federal and state law, across eras and jurisdictions, and in criminal and civil law. Motions under Rule 60(b) of the Federal Rules of Civil Procedure and state versions of that federal rule are adjudicated by the same criteria as motions under Federal Rule of Criminal Procedure 33 and, in South Carolina, under SC Crim R 29(b). The criteria were developed before the rules were enacted. **In all cases, the criteria are applied to promote truth and finality. *Legal* truth is expressed in the verdict.** A "make a different verdict likely" criterion promotes truth. As *legal* truth is narrow in criminal cases, the question must be: **would the newly-discovered evidence give fair fact-finder reasonable doubt of defendant's guilt?** DMN *at least twice* admitted certainty of Dr. Faltas' innocence or doubts of her guilt. Without benefit of the CD or transcript of the 4 February 2019 hearing (which Dr. Faltas requested but still did not receive), Dr. Faltas is still sure DMN said "I am not sure I would have found you guilty if I had been the initial trier of fact" and "if you were not innocent, you would not have pursued it all those years" but insisted all criteria must be mechanically applied even to the exclusion of admissible facts necessary for context.

Criminal defendants must exercise due diligence before trial to discover all facts, *typically* in the Prosecution's possession; **but** proof of a *Brady/Kyles* violation meets that criterion. *The* City is the Prosecution here. Charlene Crouch's May 2012 conviction could **not** have been available for discovery before trial without *the* City having put it on the public index and/or reported it to SLED. ***The* City had done neither.** *The* City's hiding Crouch's conviction is: (1) an aggravated *Brady/Kyles* violation for being intentional, and (2) a *Napue* v. *Illinois,* 360 U.S. 264 (1959), violation because, by *actively* keeping that conviction away from Crouch's rap sheet *to this day*, *the* City *continues* to give her valuable rewards for her testimony against Dr. Faltas: Crouch's "priors" were deflated when she was sentenced in July 2013 for her conviction of sexual battery of a disabled person functionally equivalent to a child. DMN also ignored settled law on cumulative impact set in *e.g., Riddle* v. *Ozmint,* 369 SC 39,

45, 631 SE 2d 70, (SC 2006) ("The impeachment value of this statement is clear. **Either the brothers were given a lift or they were not**: Jason could not have been telling the truth in all his statements.") *Riddle, supra,* at 44 and 46, respectively, granted new trial for prosecutorial misconduct, ("*Gibson v. State,* 334 S.C. 515, 514 S.E.2d 320 (1999). We are concerned here [...] with the question whether prosecutorial misconduct denied petitioner's due process right to a fair trial. *Id.*") ("An individual asserting a *Brady* violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence **or was impeaching**. *Kyles v. Whitley,* 514 U.S. 419, (1995); *Gibson, supra.* **If a *Brady* violation is found to have occurred, [new trial] must be granted.** *Gibson, supra.*") ("When determining whether the suppression of more than one item of evidence was material under *Brady,* we consider **the collective impact of the undisclosed evidence**. *Kyles v. Whitley,* 514 U.S. at 436.") [emphasis added] Prosecutorial misconduct and *Brady* violations are grounds for new trial which DMN improperly ignored. Nor does the "not merely cumulative or impeaching" prong exclude Dr. Faltas' evidence. Impeaching evidence **was** withheld in violation of *Brady/Kyles/Gibson, supra.* A key word is "merely." Impeaching evidence mandates a new trial so long as it is not *merely* impeaching. And evidence is **not** "cumulative" if it presents proves a point that was not proven at trial or is different evidence from that presented at trial on the same point. **Crucially, facts occurring *after trial* are after-discovered evidence if they prove facts or conditions *existing at the time of trial.*** DMN *erroneously* **confused the presumption of innocence,** which properly prevented Dr. Faltas from impeaching Charlene Crouch with her *mere* arrest before Crouch had been convicted of essentially the rape of a child, **with the fact that due to Crouch's conviction of that sexual battery in July 2013, she *was basically a child rapist* when she testified against Dr. Faltas in April 2013.** That victim had been sexually battered by Crouch in December 2011; Crouch was arrested in June 2012 and convicted in July 2013.

The question is not "was it proper, in *April* 2013, to *explore* Crouch's sexual battery *arrest?"* but "was it **necessary**, in February *2019,* to consider Crouch's sexual battery *conviction?"* The answer to the right question is yes ***because* a ruling on a motion is made on the state of the record *at the time of the ruling,* not the time the motion is filed.** *Ortiz* v. *Jordan,* 562 U.S. _, 131 S. Ct. 884 (2011). See also: (1) *Peacock* v. *Bd. of Sch. Comm'rs,* 721 F.2d 210, 214 (7th Cir. 1983) (generally finding that material not in existence until after trial falls within 60(b)(2) only if it pertains to facts in existence at time of trial). (2) *Gray* v. *Bryant,* 298 S.C. 285, 287, 379 S.E.2d 894, 895-6 (1989), (finding juror's letter to newspaper praising doctors and criticizing parties who sue them, which was written on the same day the jury returned a verdict in favor of the defendant doctor and published two weeks after

verdict, revealed a preexisting bias and was newly discovered evidence for purposes of Rule 60(b)); (3) *Amesco Exports, Inc.* v. *Assoc. Aircraft Mfg. & Sales, Inc.,* 87 F.Supp.2d 1013, 1015 (C.D. Cal. 1997) (finding plaintiff corporation's receipt of letter from tax commission advising it of conditional revival of its corporate status constituted newly discovered evidence for purposes of 60(b)(2) warranting relief from final judgment); (4) *Nat'l Anti-Hunger Coal.* v. *Exec. Comm. of the President's Private Sector Survey on Cost Control,* 711 F.2d 1071, 1075 n.3 (D.C. Cir. 1983) (stating task reports that came into existence after lower court's decision pertained to facts in existence at time of decision which supported a finding that the reports were newly discovered evidence within the meaning of Rule 60(b), FRCP); and (5) 11 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2859 (2d ed. 2008) (stating **"Rule 60(b)(2) has proved useful, especially when the newly discovered evidence calls into question the validity of the judgment by directly refuting the underpinnings of the theory which prevailed"**). The theory which got Dr. Faltas convicted *at the 25 April 2013 trial* is: (1) Crouch is a woman of "character" with "no dog in this fight" who "clearly stated what she saw," and (2) Steele suffered a "mental injury" suddenly in January 2010 and had to take unnamed medication for three years and three months. ***The underpinnings of that theory are directly refuted by the new evidence.*** Crouch *had* committed a child-rape-equivalent *before* testifying against Dr. Faltas. That crime **refutes Crouch's "character" touted by *the* City regardless of whether it proves dishonesty under a *crimen falsi* theory or not.** Crouch *had* "a dog in that fight": unprohibited access to Steele's tenant, Charles White, who had earlier testified to paying Crouch for sex and from whom Crouch admitted getting $300.^00/month for who knows what. Steele had many avenues to block that access: she could make *White's* continued tenancy in Steele's rental building contingent on *White's* cutting ties with Crouch; Steele could use Crouch's confession to, and conviction of, drunkenly banging on White's window or door as proof of vandalism of Steele's property. Crouch is a high-school dropout who had seen Steele put Dr. Faltas on trespass from Dr. Faltas' own apartment for which she paid rent from September 2008 to April 2011. Crouch had also, on 21 March 2013, testified *for the* City in a trial charging Dr. Faltas with trespass *to her own mailbox* on 5 September 2009. A jury acquitted Dr. Faltas of that charge. But *the* City also set a 24 April 2013 trial date for Dr. Faltas for having allegedly trespassed *into her own apartment* on 8 July 2010. That, too, was dismissed; but the law as read *and understood by a sitting jurist* **has no relationship to *Crouch's perception of reality.*** DMN's injection of his own views of the law into Crouch's head and its impervious resistance to Dr. Faltas' eliciting Crouch's *belief, right or wrong,* about Steele's ability to ban Crouch from visiting White in the apartment he rents from Steele are error and **irrefutable proof of the jurist's hopeless bias.** DMN ignored the compulsory process guaranteed to a criminal defendant by

the Sixth Amendment; and instead, *announced* that testimony of the witnesses for whose attendance Dr. Faltas sought but was denied compulsory process would not have helped. This is an *a fortiori* from the error which was recently reversed by SC's Supreme in a PCR appeal, *Darrell L. Goss, Petitioner,* v. *State, Respondent,* Appellate Case No. 2016-002186, Opinion No. 27843, Heard June 12, 2018 – Filed October 17, 2018, which ended thus:

> Here, the PCR court's decision to take judicial notice of the substance of witnesses' testimony and then find those witnesses not credible diluted the process to the point where the PCR court's factual findings—and perhaps the legal conclusions arising from those factual findings—were based upon an incomplete consideration of all the evidence. Based upon the foregoing, we REMAND this matter to the circuit court for a de novo PCR hearing. It will be incumbent upon Goss to secure the attendance of his witnesses for the de novo hearing, and Goss, trial counsel, and other pertinent witnesses may be presented for testimony by the parties. We emphasize the proceedings will be de novo, and neither party may rely upon testimony presented at the initial hearing which is the subject of this appeal.
>
> BEATTY, C.J., KITTREDGE, HEARN and FEW, JJ., concur.

A. Over two centuries of case law establish that nomenclatures should not cement injustice.

Case law being consistent, quotations from South Carolina's and other states' case law are hereunder set in chronological order with emphasis on the heightened rights of criminal defendants seeking new trials.

1917-02-17: *State v. Wiley,* 106 S.C. 437, 91 S.E. 382 (S.C. 1917):

> We think his Honor was in error in finding that the evidence offered was merely cumulative. It was more than merely cumulative; it gives more testimony from disinterested witnesses and throws light on and elucidates the points at issue. "Cumulative evidence" is "augmenting or giving force" to the evidence or "increasing it by successive additions." The proposed new evidence was to contradict the State's evidence that the deceased was unarmed, and that defendant followed him, having previous to that time made threats against him, and to show that the deceased was armed, and that the defendant did not follow him, but was called by the deceased before defendant went where deceased was; that defendant made no threats. All the new evidence was in derogation of the State's testimony, and, under all facts and circumstances developed in the case, due diligence was exercised by the defendant and his counsel; the evidence was material, in that it corroborated the evidence of the defendant, who was the only witness in his behalf, who testified on the part of the defense as to the actual facts at the occurrence when the deceased was killed.

1921-06-30: *State v. Casey,* 116 S.C. 280, 108 S.E. 112 (S.C. 1921)

> Judge McIver [found]: "That the defendant and his counsel used due diligence, that they did not at the former trial have notice of the testimony now desired to be offered, and that the testimony is material. I am, however, of the opinion that the evidence submitted is largely cumulative and would not probably have changed the verdict of the former trial, and for this reason it is ordered that the motion for a new trial be, and the same is hereby, overruled." [¶] In view of the facts developed at the trial before Judge Sease and the nature and character of the new testimony, it is more than merely cumulative. It is material to the issue. It shows the mental attitude of the deceased and substantiates and corroborates the defendant and his witnesses **as to whether deceased was armed or not at the time he was on the premises of the defendant when the killing occurred.** [¶] ***It is of vital importance in the case and might have vitally affected the jury in the consideration of the case, if it had been presented for***

their consideration at the trial. It might have influenced and probably might have changed their view, taking into consideration other facts and circumstances. As to whether or not deceased made threats while on his way to defendant's home, and whether or not he then had a pistol on his person, **is evidence now of newly developed facts, and not merely cumulative, as held by his Honor, *and, even if merely cumulative, might have changed the result if submitted to the jury.*** [¶] **His Honor was in error in not granting a new trial.**

1922-08-17: *Turner v. Southern Railway Co.*, 121 S.C. 159, 113 S.E. 360 (S.C. 1922):

The county Judge['s] refusal of the motion was expressly predicated upon this ground: **"There must be an end of litigation and a litigant is not entitled to his two days in Court without making a clear showing as to the exercise of diligence."** [....] In disposing of the motion for new trial we think it is apparent that the conclusion of the learned county Judge was influenced, if not controlled, by an error of law in the application of the principle of due diligence to the peculiar facts of the case at bar. There can be no question as to the validity and importance of the salutary general rule that parties should be held to diligence in the preparation of their cases for trial, and that public policy, looking to the finality of trials, demands that new trials shall not be granted where alleged newly discovered evidence could with reasonable diligence have been produced at the trial. But we think the principle applicable to the state of facts appearing upon the hearing of this motion is thus correctly stated in 29 Cyc., p. 868:

> **"But where it is clear that a witness was mistaken in giving the only or controlling testimony to a material fact, or that the testimony of witness on which the verdict proceeded was found on particular circumstances, which have been clearly falsified, a new trial should be granted."**

See cases cited, notes 79, 80, p. 868, 29 Cyc., and particularly *Huson v. Egan* (Com. Pl.), 6 N.Y. Supp., 661, where witness misunderstood question. 20 R.C.L. (Com. Pl.), p. 292, § 74; *Cockrell v. State*, 71 Tex. Crim. R. *Page 163 163 S.W., 343, 48 L.R.A. (N.S.), 1001. When the mistake is that of a party to the cause, and is evidenced by a subsequent written admission under oath of the party himself, the evidence thus presented clearly could not have been produced at the trial and the adversary's lack of diligence in producing impeaching testimony upon the trial becomes immaterial. See *Guth v. Bell*, 153 Iowa, 511, 133 N.W., 833, 42 L.R.A. (N.S.), 692, Ann. Cas., 1913 E, 142, and note, p. 147.

1922-11-03: *State v. Hawkins*, 121 S.C. 290,114 S.E. 538 (S.C. 1922):

Justice WATTS: I am of the opinion that some Court ought to have jurisdiction to entertain motions for new trials on the ground of after-discovered testimony. [¶] I have changed my mind since I dissented along with Circuit Judge Ernest Gary in the case of *State v. Lee*. My change was brought about by the case of *State v. Williams*,76 S.C. 135. I tried him on Circuit; he was convicted of murder. I overruled his motion for a new trial and sentenced him to death; he appealed, and the Supreme Court affirmed the judgment of the Circuit Court and remanded the case for the purpose of assigning a new day for the execution of the sentence. **His attorneys discovered new evidence and moved before the Circuit Court for a new trial, which was granted by, I think, his Honor, Judge Prince, and Williams was either acquitted or case *"nol prossed." An innocent man would have suffered if some Court had not had the power to grant a new trial on after-discovered evidence.*** [¶] My opinion is that, when the Supreme Court has jurisdiction of a case on a *prima facie* showing, it should have the power to suspend the appeal and send it to the Circuit Court for investigation, and with power to the Circuit Court to grant a new trial on after-discovered testimony. [¶] After remittitur of the Supreme Court is sent down, that Court has no further jurisdiction. After that the Circuit Court should have jurisdiction to hear a motion for a new trial at any time, on the ground of after-discovered evidence, and grant a new trial in a proper case.

1925-12-14: *State v. Tripp*, 133 S.C. 294, 130 S.E. 888 (S.C. 1925)

We take it that the well-settled principle in reference to this subject in this State is that the test is whether the affidavits filed would lead any reasonable mind to the inference that the newly discovered evidence

would probably change the result. Therefore, the evidence must be viewed in the light of the probable result on the minds of the jury, and, in this view, there was error on the part of his Honor in not granting a new trial. In support of the contention that there was error in refusing to hear the affidavits of Munro and Skinner, the appellant cites the following, from the case of *Durant v. Philpot*, 16 S.C. 125:

> "The fourth ground of appeal is based upon the proposition that a new trial should not be granted on the ground of newly discovered evidence, the effect of which is to impeach or contradict a witness examined at the former hearing. Whatever may be the rule elsewhere, it is quite certain that such is not the rule in this State, nor does it seem to be the rule in rule in England. In Levingsworth ads. Fox, 2 Bay, 520, a new trial was granted because evidence was discovered after the trial, showing that one Rountree, a witness who had testified at the former trial, was interested in the event of the suit, though he had stated, when examined on his *voir dire*, that he had no interest. In *Durant v. Ashmore*, 2 Rich., 184, a new trial was granted on the ground of after-discovered written evidence, which might have affected the credit of a witness examined at the former trial. So, in *Fabrilius v. Cock*, 3 Burr, 1771, a new trial was granted because evidence was discovered after the former trial, going to show the subornation of witnesses who testified at the first trial."

His Honor should have considered these affidavits, and there was error in not so doing.

1925-01-25: State *v.* Pittman, 137 S.C. 75, 134 S.E. 514 (S.C. 1926)

[N]ewly discovered testimony, which is in a sense cumulative, **may throw such new light on a vital issue and may be of such compelling force as clearly to require a new trial in the interest of justice.** Such was the character *Page 89 of the after-discovered evidence in the cases of *State v. Wiley*, 106 S.C. 437; 91 S.E. 382, and *State v. Casey*, 116 S.C. 280; 108 S.E. 112, cited by appellants.

1930-05-03: *State* v. *Hamilton,* 287 P. 933 (Montana Supreme Court 1930)

This evidence tends strongly to impeach the testimony of [5] Scheibel and Lackner and would "probably produce a different result upon another trial. * * * `**Where the impeaching evidence may demonstrate perjury in the witness upon whose evidence the verdict was founded and but for which conviction could not have been had,' a new trial should be granted. (*State* v. *Belland*, 59 Mont. 540, 197 P. 841).**" (*State* v. *Mott*, 72 Mont. 306, 233 P. 602, 606; *State* v. *Gangner*, 73 Mont. 187, 235 P. 703.) *Page 368 However, motions for a new trial in criminal cases on the [6] ground of newly discovered evidence are not favored (*State* v. *Van Laningham*, 55 Mont. 17, 173 P. 795), and, regardless of the facts set up in the affidavits therefor, the defendant is not entitled to a new trial unless he shows that "he could not, with reasonable diligence, have discovered and produced" the evidence at the trial. (Sec. 12048, Rev. Codes 1921.)

1937-06-15: *McCabe* v. *Sloan,* 84 S.C. 158, 191 S.E. 905 (SC 1937)

From 20 R.C.L., 297, § 79[:] "*[]* Cumulative evidence has been tersely defined as additional evidence of the same kind to the same point. It is apparent that there is a wide difference in meaning between the terms `of the same kind' and `to the same point', as used in the various definitions. Newly discovered evidence, to be cumulative, must not only tend to prove facts which were in evidence at the trial, but must be of the same kind of evidence as that produced at the trial to prove those facts. If it is of a different kind, though upon the same issue, or of the same kind on a different issue, it is not cumulative. Nor is evidence cumulative in the legal sense which, while tending to establish the same general result, does it by proof of a new and distinct fact. To render evidence subject to the objection that it is cumulative, in the legal sense, it must be cumulative, not with respect to the main issue between the parties, but on some collateral or subordinate fact bearing on that issue. * * * **Newly discovered evidence raising a new ground of claim or defense is, of course, not cumulative, nor is evidence explaining an apparent conflict in or contradicting, evidence offered at the** *Page 168 **trial. Newly discovered evidence of admissions has been held not to be cumulative to evidence of facts and circumstances."**

From Section 72 of the same authority[:] "As a general rule a new trial will not be granted on account of the discovery of facts and circumstances merely cumulative in their character. The reason of the rule is that public policy, looking to the finality of trials, requires that the parties be held to diligence in preparing their cases for trial, and it is not, strictly speaking, an independent rule, but a mere corollary of the requirement that the newly discovered evidence must be such as to render a different result probable on a retrial of the case. **The rule must, however, be taken in its proper sense, and is not to be understood as precluding a new trial in every case, where the new testimony relates to a point contested on the former trial; for if it were so a new trial could seldom, if ever, be granted in any case."**

1953-12-10: *United States* v. *Rutkin,* 208 F.2d 647 (3d Cir. 1954)

The test whether evidence is cumulative is not whether it tends to establish the same fact, but rather whether it is different in kind, quality or grade.[2] New evidence of a higher grade or character should not be classified as merely cumulative.[3] ***Evidence of disinterested witnesses although repetitious of that given by an interested party is evidence of "another character" and "in justice the two classes of testimony should be distinguished, and the defendant should have the benefit of the declarations of disinterested witnesses."***[4] The criterion to be applied is whether the new evidence, notwithstanding its cumulative character, "possesses sufficient probative force to render probable a different result upon a retrial of the case"; if it does, "it will then warrant and require an order granting a new trial."[5]
In applying the principles stated it is imperative to keep in focus (1) the critical issue at the original trial; (2) the source, grade and quality of the testimony there submitted; (3) the quality and grade of Frayne's newly-discovered evidence and (4) the probable effect of the latter evidence upon a retrial of the case.

1968-11-19: *State* v. *Funderburke,* 251 S.C. 536, 164 S.E.2d 309 (S.C. 1968)

Cumulative evidence has repeatedly been defined to be additional evidence of the same kind to the same point. *McCabe v. Sloan*, 184 S.C. 158, 191 S.E. 905, 909 (1937); *Johnston v. Belk-McKnight Co.*, of Newberry, 188 S.C. 149, 198 S.E. 395, 399 (1938).
Appellant is entitled to a new trial and the judgment of the lower court is, accordingly, reversed.

1983-02-16: *Robert Gene MULKINS, Marilyn L. Mulkins, Roscoe M. Mulkins and Pauline L. Mulkins* v. *BOARD OF SUPERVISORS OF PAGE COUNTY, Iowa,* 330 N.W.2d 258 (S. Ct. of Iowa 1983).
Ordinarily newly discovered evidence as the term is used in Rule 252 is limited to evidence which existed at the time of trial but which, for excusable cause, the party was unable to produce at that time. Wilkes v. Iowa State Highway Commission, 186 N.W.2d 604, 607 (Iowa 1971). There is, however, authority that when it is 262*262 no longer just or equitable to enforce a judgment, facts which occurred *after* its rendition may be considered in deciding whether it should be vacated or whether a new trial should be granted. [* * * * *] **Most of the cases granting relief on posttrial events have done so when the new evidence, although arising after trial, goes to a condition which existed at the time of trial.** *See, e.g., Bridgham v. Hinds,* 120 Me. 444, 452, 115 A. 197, 201 (1921); Swanson v. Williams, 303 Minn. 433, 435-36, 228 N.W.2d 860, 862-63 (1975); Piper v. Piper, 239 N.W.2d 1, 4 (N.D.1976); Chemical Leaman Tank Lines, Inc. v. Trinity Industries, Inc., 478 S.W.2d 114, 118 (Tex.App.1972) (distinguishing *Forshagen v. Payne,* 225 S.W.2d 229, 231 (Tex.App.1949)).

1989-05-03: *STATE of Maine* v. *Robert MELANSON,* 566 A.2d 83 (Supreme Judicial Court of Maine 1989)
But if the testimony relates to a material issue a new trial will not be denied merely because its contradiction tends to impeach or discredit a witness. *See also Nathan M. Rodman Co. v. Kostis,* 121 Me. 90, 115 A. 557 (1921); Bridgham v. Hinds, 120 Me. 444, 115 A. 197 (1921); *White v. Andrews,* 119 Me. 414, 111 A. 581 (1920); *Drew v. Shannon,* 105 Me. 562, 75 A. 122 (1909); *Parsons v. Railway,* 96 Me. 503, 52 A. 1006 (1902); Stackpole v. Perkins, 85 Me. 298, 27 A. 160 (1893).
As long ago as *Parsons v. Railway,* 96 Me. at 506-509, 52 A. at 1006-1008, we rejected the rule for both

civil and criminal cases that would require that newly discovered evidence material to the issue of the case, which might also contradict, tend to impeach or discredit a witness, be of such character as to result *necessarily* in a different verdict before a new trial can be granted. We stated that such a strict rule would "deprive a party of the privilege of having his new evidence passed upon by a jury, whose peculiar province it is to decide controverted issues of fact" and that the correct rule is that "there must be a probability that the verdict would be different upon a new trial. But it is not necessary that the additional testimony should be such as to *require* a different verd+ict." (Emphasis in original).

1990-03-29: *The PEOPLE of the State of Colorado* v. *Park Journee ESTEP*, 799 P.2d 405 (Colorado Court of Appeals, Div. V. 1990). As Modified on Denial of Rehearing May 17, 1990. Certiorari Denied November 13, 1990.

The court's ruling that the Toole confession would not probably result in defendant's acquittal was based on its assessment of Toole's credibility, or lack thereof. However, the trial court did not make, nor do we believe that the evidence would support, a finding that Toole's testimony was incredible as a matter of law. In our view, the determination of the character of the new evidence to probably produce an acquittal in a new trial is not to be based on the court's experience in evaluating the credibility of witnesses. **Rather that determination should be premised on whether the new evidence, as developed in a trial, when considered with all the other evidence is such that *a reasonable jury* would probably conclude that there existed a reasonable doubt as to defendant's guilt and thereby bring about an acquittal verdict.** *See People v. Gutierrez,* 622 P.2d 547 (Colo.1981).

*408 By emphasizing its own experience in evaluating the credibility of a witness, the court applied an incorrect standard for evaluating whether "the newly discovered evidence is of such a character as to probably bring about an acquittal verdict if presented at another trial." Therefore, the matter must be remanded for reconsideration of defendant's motion in accordance with the standard enunciated herein.

2007-02-06 and **2007-04-26:** *City of Columbia* v. *Faltas,* 2007-UP-193 (SC Ct. App. 2007) argued *pro se* on 6 February 2007, decided 26 April 2006, after this form oral argument before then-Judges Anderson and Huff and Beatty:

[minute 11:01] **The Honorable Judge Beatty:** Ms. Faltas, your time is about running out. I wanted to ask you one other question: whether or not the evidence that you put forward was untruthful? And truthfully was it really after-discovered evidence? We're talking about a photograph that you had access to. And the only new thing that I've seen in the record is that you had it blown up and you deduced some other evidence from the expanded picture.

[minute 11:28] **Appellant *pro se*:** Actually, and I'm glad Your Honor asked me that question because that was a question that the Honorable Judge Anderson asked me and I didn't get around to answering it. And the fact is no, no, no. Not only did I not have it before trial, I did not even have it during trial. I did not even have it after trial until a judge [sic] by the Honorable Judge Huff allowed me to make a photocopy of it.

And, and this is not only a red herring by the Prosecution, it is straight falsification of the record. Specifically on, on March 14th 2002, she wrote to my then-counsel that there, the items are not there; there is a photograph of it. He immediately faxed her, and that's on record page 39, saying "I need to see that photograph ASAP." She essentially faxes him back a one-sentence letter saying essentially "Go to hell. I'm not going to show you the photograph; and do whatever you want." So, what else? And in---

[minute 12:51] **The Honorable Judge Beatty:** What page of the record is that on?

[minute 12:53] **Appellant *pro se*:** Page 39 Your Honor; and this is very important and it was attempted. The, the exchanges are on page 39 and 40. And that's from, from the trial record. And then also, during the after-discovered evidence hearing, Mr. Briggs came and testified. (Advocate chokes

and coughs.) Excuse me. And I specifically asked him to test, asked him: "Short of breaking into Ms. Thye's office to get that photograph before the trial, was there anything else you could have done?" And he said "I was relying on the discovery process." Besides, prior to that, there were 10 specific requests for production [sic]. Additionally,---

[minute 13:48] **The Honorable Judge Anderson:** Ms. Faltas, your time is up. Now, we need to let her talk then you can reply. Well give you time in reply. *****

[minute 14:02] **The Honorable Judge Anderson**: All light, Counsel. you're recognized.

[minute 14:04] **Counsel for the City**: Thank you, Your Honor. Good afternoon. May I please the Court. My name is Dana Thye and I represent the City of Columbia in this matter. This case was decided correctly, first at the trial and on direct appeal, where a panel of this Court affirmed the conviction, and most recently by the Circuit Court in reversing the grant of a new trial. There was simply no manifest injustice done here despite Dr. Faltas' contentions.

[minute 14:29] **The Honorable Judge Beatty:** Was she or was she not denied the photograph that is the basis of the new trial motion?

[minute 14:32] **Counsel for the City:** She had the photograph on the morning of trial, yes, Your Honor.

[minute 14:36] **The Honorable Judge Beatty:** On the morning of trial; but they had requested it sometime before then. Didn't they?

[minute 14:39] **Counsel for the City:** They had requested it. That's correct There was no --

[minute 14:40] **The Honorable Judge Beatty:** It was not given to them.

[minute 14:42] **Counsel for the City:** There was nothing filed but they had requested it in writing. I informed that the Wal-Mart representatives bad the photograph and they'd be bringing it to the trial. I then invited them to make whatever motions they needed to make --

[minute 14:52] **The Honorable Judge Beatty:** Actually, your letter doesn't say all that. It just says you (reading from the Record on Appeal) "intend to call the case for trial on" your "next term. You're welcome to make pre-trial motions as you deem necessary."

[minute 14:58] **Counsel for the City:** It was the preceding letter when I told them that the photograph, that there were not actually the folders. They wanted to see the actual folders. I told them the folders didn't exist; it was just the photograph.

[minute 15:06] **The Honorable Judge Beatty:** Well, let me ask you. The photograph, after she got it and used it at the pre-trial, well, excuse me, at the new-trial motion, digitally, I guess, enlarged the photograph and discovered certain things in that photograph. Would you consider that to be after-acquired evidence or not?

[minute 15:20] **Counsel for the City:** *No, Your Honor, I wouldn't consider that. I would consider it after-created.*

[minute 15:24] **The Honorable Judge Beatty:** It's not newly-discovered at all?

[minute 15:26] **Counsel for the City:** The magnification certainly was. I mean, she didn't. The magnification was after the trial. That much is, is true. The photograph itself and the opportunity to do that magnification, she had it at trial and could have made any request to have more time---

[minute 15:39] **The Honorable Judge Beatty:** How, how could she have done that at trial if you did not produce the photograph until the morning of the trial?

The panel ruled *unanimously* for Dr. Faltas; rehearing/rehearing *en banc* was denied; and SC's Supreme Court denied *the* City's *certiorari* petition. So, although the opinion is unpublished, the complete identity between the parties forever binds *the* City, in all its cases against Dr. Faltas, by the ruling that post-trial investigation of something sprung on Dr. Faltas *for the first time during trial* ***is after-discovered evidence.***

From 1917 to 2007, South Carolina to Colorado, and Maine to Montana, **the test is a totality of the evidence, old or new, existing at trial or after-occurring,** ***in an integrated new light,*** not a mechanical test of each element in a vacuum averse to impeaching perjurers. After-discovered evidence gains weight from the Prosecution's active concealment thereof. Nor could Dr. Faltas have called Mangum, who was there as the City's lawyer but had **not** prosecuted the case, to testify. Further, due to the limited summons power of SC magistrate courts, neither Teresa Knox nor Jessica Mangum (now CMC Chief Judge) brought records.

Dr. Faltas incorporates herein by reference **all her arguments and citations** in 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.

Sincerely submitted on 24 October 2022.

s/Marie Assa'ad-Faltas, MD, MPH, Defendant/Appellant *pro se*
P.O. Box 9115, Columbia, SC 29209 Phone: (803) 783-4536 Cell: (330) 232-4164
e-mail: Marie_Faltas@hotmail.com **and** MarieAssaadFaltas@GMail.com

Certificate of Service Satisfying the *Substance* of Form 7 and of all Relevant Rules, SCACR
On 24 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*
P.O. Box 9115, Columbia, SC 29209 Phone: (803) 783-4536 Cell: (330) 232-4164
e-mail: Marie_Faltas@hotmail.com **and** MarieAssaadFaltas@GMail.com