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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
County of Richland)

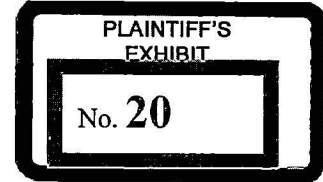
COURT OF COMMON PLEAS
2019-CP-40-01374

CITY OF COLUMBIA,)
APPELLANT,)

vs.)

TRANSCRIPT OF RECORD

MARIE ASSA'AD FALTAS, MD, MPH,)
RESPONDENT,)



January 28, 2022
Columbia, South Carolina

BEFORE:

THE HONORABLE D. CRAIG BROWN, JUDGE, via WebEx.

APPEARANCES:

MARSHALL JAMES, ESQ.
DANIEL HAYES, ESQ.
Attorney for the City

DANIEL ADDISON, ESQ.

MARIE FALTAS, MD, MPH

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right. The next matter is --
2 involves the attorneys who are in the courtroom with the
3 court reporter: City of Columbia vs. Marie Therese
4 Assa'ad Faltas.

5 This is an appeal from Magistrate's Court -- or
6 excuse me, city court -- well, Magistrate's Court. The
7 civil action case number 2019-CP-40-1374. The parties in
8 attendance are Marshall James and Dan Addison. I think
9 there's one other individual in there, as well. Who that
10 might be?

11 MR. HAYES: Daniel Hayes with the City Attorney's
12 Office, Your Honor.

13 THE COURT: I'm sorry, tell me your name again.

14 MR. HAYES: Daniel Hayes.

15 THE COURT: All right. You all may need to come
16 forward and come to that podium when you all speak just to
17 make sure that everyone can hear you.

18 DR. FALTAS: Sir, I still did not hear the name of
19 the city attorney.

20 THE COURT: Daniel Hayes, I believe the name was; is
21 that right?

22 MR. HAYES: Yes, Your Honor.

23 THE COURT: Daniel Hayes?

24 MR. HAYES: Yes, sir.

25 THE COURT: And Mr. Marshall James, is that seated

1 with you?

2 MR. JAMES: That's correct, Your Honor.

3 THE COURT: All right. And Mr. Addison is seated in
4 the courtroom, as well?

5 MR. ADDISON: That's correct, Your Honor.

6 THE COURT: All right. Are you all ready to proceed
7 here this morning, Mr. Addison?

8 MR. ADDISON: Yes, sir, Your Honor. I didn't know if
9 we were going to -- I don't know if we needed to dispose
10 of Dr. Faltas' motion to have me relieved first. I
11 believe we --

12 THE COURT: All right.

13 MR. ADDISON: -- may need to do that.

14 THE COURT: All right. Dr. Faltas, I'm going to deal
15 with your motion to have Mr. Addison relieved.

16 DR. FALTAS: Thank you, sir. At the threshold, I
17 should not have counsel imposed on me, and the irony of
18 ironies is that in this particular type of situation, a
19 motion to reopen a criminal case involving the City of
20 Columbia Municipal Court based on after-discovered
21 evidence, I have a previous experience of doing an appeal
22 pro se and, thank God, prevailing unanimously and that is
23 City of Columbia vs. Marie Faltas, and that is unpublished
24 opinion number 193 from the State Court of Appeals.

25 THE COURT: Now, Dr. Faltas, I want you to stay

1 focused and give me the reasons that you want Mr. Addison
2 relieved as your lawyer.

3 DR. FALTAS: Okay. Okay. So I'm -- I'm putting on
4 the record first that I shouldn't have to have a lawyer
5 imposed on me; second, that Mr. Addison has not been
6 involved in the factual details of the case, has not even
7 discussed it with me what the arguments should be on the
8 substantive, only communicated with me by sporadic
9 e-mails, have not -- has not kept me informed, has not
10 supplemented the record, but -- but if he is relieved or
11 if he is not relieved under Anders vs. California and
12 under State vs. Williams, which implemented Anders vs.
13 California in South Carolina, even when one is represented
14 in a criminal appeal and the -- and the appellate counsel
15 doesn't wish to argue the merits of the appeal, then the
16 pro se party -- the party is allowed to proceed, brief the
17 issues.

18 In this case, because -- I think the same process
19 should apply to appeals from Magistrate's Court to Circuit
20 Court as it applies from Circuit Court to either the Court
21 of Appeals or -- the State Court of Appeals or the State
22 Supreme Court.

23 So if you deny the motion to relieve Mr. Addison, and
24 he does not argue that I should prevail on this appeal,
25 then I should be allowed to argue it myself.

1 In addition, because the Notice of Appeal from
2 Magistrate to Circuit Court requires the grounds of
3 appeal. I had written in my notice detailed preliminary
4 grounds for appeal and indicated that I will await the
5 provision of a -- of a transcript to further supplement
6 the grounds.

7 The transcript I think was made from...

8 Hello?

9 THE COURT: I'm still here.

10 DR. FALTAS: I'm so--- okay. For some reason, it --
11 it had turned off. So I should be, at the very least,
12 allowed the same rights, the same Anders right -- rights
13 that the worst serial murderer or the worst serial rapist
14 in South Carolina is allowed, which is to supplement
15 counsel's brief or argument on appeal from a criminal
16 matter.

17 THE COURT: All right.

18 DR. FALTAS: If you -- if you deny the motion to
19 relieve counsel, I -- I -- I would like the same
20 permission to interlocutory appeal as you gave me
21 yesterday in the PCR case because this discrimination
22 needs to come to a head.

23 THE COURT: All right. Thank you, Dr. Faltas.

24 Mr. Addison, let me hear from you, please, sir.

25 MR. ADDISON: Your Honor, can you hear me from back

1 here?

2 THE COURT: I can.

3 Can you hear him, Dr. Faltas?

4 DR. FALTAS: Yes, sir.

5 THE COURT: All right. Thank you. Mr. Addison, you
6 may proceed.

7 MR. ADDISON: Your Honor, I have not filed anything
8 to oppose Dr. Faltas' motion as we discussed in, I think,
9 some of the email stream that went back and forth on this
10 issue with your office and -- and Dr. Faltas and myself.

11 I have moved from Columbia to Charleston. I am
12 practicing with a firm down there. I was appointed to
13 this case in the --

14 DR. FALTAS: I'm sorry, I can't hear. I didn't hear
15 what he said. I hear voices, but I can't hear him
16 clearly.

17 MR. ADDISON: I'm coming up --

18 DR. FALTAS: If he can repeat what --

19 MR. ADDISON: -- to the computer.

20 THE COURT: That's okay. Go ahead, Mr. Addison.

21 MR. ADDISON: Can you hear me now, Dr. Faltas?

22 DR. FALTAS: Yes, sir. Good morning. Yes, sir.

23 MR. ADDISON: Your Honor, I moved from Columbia to
24 Charleston in March of 2020 after I had been appointed to
25 this case. I had been on the case probably five or six

1 months at that point, came down -- came down to Charleston
2 and continued to handle the case.

3 We did have some matters heard before I left Columbia
4 and moved down, and then we entered, obviously, the
5 pandemic peaks and waited for quite a while for the
6 magistrate to return -- to issue his return.

7 In that process, I have continued to be in touch with
8 Dr. Faltas. I know she's indicated that I'm a bad lawyer
9 and don't communicate. I believe that I have communicated
10 as necessary.

11 As I have told her continually throughout it's my
12 belief that it's my job to represent her interest and make
13 sure the system treats her correctly pursuant to my
14 responsibilities under the pro bono rules.

15 As I told your office and Dr. Faltas, I truly have no
16 understanding of what pro bono requires of me once I leave
17 the district. I don't really know why it's there. But I
18 had been assigned to the case, and I've continued to
19 handle it as necessary.

20 This position that I would not file supplements if it
21 was my position that I didn't believe they were necessary.
22 I think she has made her points clear in her motion to the
23 court on her appeal and the motion that we're dealing with
24 today of the refusal of the judge to recuse himself and
25 some other issues in her appeal at the Magistrate level.

1 That is what we are handling before you today per my
2 understanding.

3 In terms of this motion for my relief, I have made no
4 opposition to it formally. If Dr. Faltas wants me off the
5 case, and the Court wants me off the case, that's fine.
6 If I am to remain, I will remain and do my job.

7 THE COURT: All right. Thank you, sir.

8 All right. Based upon what I've heard here today, I
9 am going to respectfully deny Dr. Faltas' motion to
10 relieve Mr. Addison as her attorney in this matter.

11 As I said yesterday, I believe that the Supreme Court
12 has on more than one occasion issued orders prohibiting
13 her from representing herself in the courts of this state.
14 I do not hear anything that would lead me to believe that
15 Mr. Addison should be relieved as her attorney and,
16 therefore, that request is respectfully denied.

17 Now --

18 DR. FALTAS: May I --

19 THE COURT: I'm sorry.

20 DR. FALTAS: I'm sorry.

21 THE COURT: I'm sorry. Go ahead, Dr. Faltas.

22 DR. FALTAS: I just want to renew the motion for
23 leave to interlocutory appeal, please.

24 THE COURT: Well, this is what I'm going to do. I
25 thought about this thing yesterday after we broke court,

1 and it's something that woke me up at three o'clock this
2 morning thinking about it.

3 I do not -- I believe that my decision yesterday is a
4 decision that I made, and I am stuck with it. But I do
5 believe that the decision I made yesterday to continue
6 that case to allow you to appeal that issue was an error
7 on my part, and it will be something that I have to eat
8 crow, so to speak, on -- on that issue.

9 You will certainly be entitled to appeal this issue
10 after this matter is heard, and therefore, I plan to move
11 forward with this case today.

12 So Mr. Addison, are you ready to proceed, sir?

13 MR. ADDISON: Yes, sir.

14 THE COURT: Mr. James, are you ready to proceed?

15 MR. JAMES: Yes, sir.

16 DR. FALTAS: Sir, may I ask if you've made the ruling
17 on my ability to supplement counsel's argument under
18 Anders vs. California from the U.S. Supreme Court and
19 State vs. Williams from the Supreme Court of South
20 Carolina?

21 THE COURT: Pursuant to, as I said yesterday, the
22 previous orders of the South Carolina Supreme Court
23 without counsel filing such, you are prohibited from
24 filing such.

25 All right. Let me hear from you, Mr. Addison,

1 please, sir.

2 DR. FALTAS: But, sir, this -- this applies to all
3 pro--- all counsel of criminal appellants that they get --

4 THE COURT: Dr. Faltas, I've ruled on that issue.
5 We're going to move forward, and that's my ruling, okay?

6 All right. Mr. Addison.

7 MR. ADDISON: Your Honor, the issues before you today
8 on this motion are relatively simple. Dr. Faltas
9 submitted a written motion that she submitted to the Court
10 that's been the issue of quite a few matters we've been
11 dealing with.

12 The initial matter was dealt with the prior ruling of
13 Judge Newman where there was no return. There was just an
14 oral order from the magistrate. We needed a return. We
15 finally got the return. That, obviously, took quite a bit
16 of while.

17 I think Dr. Faltas actually has a point in her motion
18 that -- within the language of the motion that the return
19 should have been done in a timely manner as per the
20 statute and the requirements under the rules, which is why
21 Judge Newman did rule. She issued an order that said the
22 magistrate was supposed to get us -- get that return to us
23 in a timely manner. He did not. He actually took quite a
24 bit of time. Obviously, I believe Covid may have been a
25 factor in there.

1 But my primary point that I would have for you today,
2 Your Honor, what I believe is the best argument that
3 Dr. Faltas has in her motion is this: The motion for
4 recusal at that hearing with Judge Newsome, the
5 magistrate, in Richland County.

6 She points out that she had prior dealings with Judge
7 Newsome and did not feel like that she could get a fair
8 trial with Judge Newsome because of those prior dealings
9 with Judge Newsome.

10 His response to the request for a return is evidence
11 in and of itself to me that he does not like judge -- Your
12 Honor, that he does not like Dr. Faltas. He was very put
13 out that he was going to have to do this return. It took
14 him quite a while to do it. There was a great deal of
15 back and forth with the Court and all of us on his lack of
16 desire to do so.

17 If you read transcript from this particular hearing
18 in front of Judge Newsome itself, it's very clear he has a
19 great deal of animosity for Dr. Faltas.

20 As we just heard in the motion before you to have me
21 relieved, Dr. Faltas does not do well with personal
22 relationships with most everybody around her. She is an
23 extremely difficult person to deal with.

24 I know she's not going to like me saying any of this,
25 but I believe it goes to the very heart of her motion as

1 to the judge recusing himself in this appeal hearing at
2 the magistrate level.

3 He clearly had prior dealings with her. He clearly
4 had a great deal of dislike for her as is evidenced by
5 transcript. And as such, I believe that it was in the
6 best interest of the system that we all want to hold up to
7 a very high standard that he should have said I just need
8 to step away from this case. I'm going let somebody else
9 handle it.

10 It's difficult because Judge Faltas -- I keep saying
11 Judge Faltas, I'm sorry, Dr. Faltas at that point had been
12 through about every judge in Richland County. That's why
13 Judge Newsome heard it.

14 All the city judges had to recuse themselves for one
15 dealing or another with her, and Judge Newsome is kind of
16 the one who ended up with the last run at it within
17 Richland County. That's why he was assigned to the case.
18 It was actually a city case, obviously, and you have a
19 Richland County magistrate hearing it instead of a city
20 judge.

21 Regardless of all of that, I believe the best thing
22 that could have happened here would have been for Judge
23 Newsome to have said, "You're right, Dr. Faltas. I do not
24 need to hear this case. Let's bring someone else in here
25 to hear it." Then she can make all the arguments she

1 wanted to make and put them up and you would not have had
2 the back and forth banter as much between her and the
3 judge in that particular case.

4 If you read the transcript, that's a great deal of
5 what went on, was this, you know, you did this to me in
6 the past and him responding yes, I did and here's why.

7 So you can see the immediate potential for a belief
8 that there is clear bias of that sitting jurist hearing
9 the case. So I believe that is the strongest argument
10 that the Doctor makes in her motion.

11 As to her other motion matters that she's brought up,
12 there was a Brady motion issue that she believes the City
13 did not properly provide her with certain evidence, but to
14 a large degree, I believe that the magistrate pretty much
15 just kind of dismissed without going into a whole lot of
16 detail.

17 He did talk to the City some about it. There was
18 some back and forth on it, and there was some admission
19 from the City that it's possible that they may have missed
20 some things. Because of the numerous cases that they are
21 dealing with Dr. Faltas on, that was pretty much the
22 response from the City as to why there might have been
23 some problems.

24 The issue with that is if there was anything missing
25 pursuant to her Brady motion -- it doesn't matter if it

1 was one-third of one page with a little bit of information
2 on it, that's a clear violation of her rights under Brady.

3 She should have had any potential evidence that might
4 be exculpatory at her disposal prior to going forward with
5 her -- with her hearing. So I believe the judge was a bit
6 dismissive of that particular motion that the Doctor made
7 at that prior hearing, as well.

8 The after-discovered evidence, I'm not going to get
9 into any of that in too -- in too great of detail, Your
10 Honor. She's made her points on those issues. I think
11 that's where Dr. Faltas and I split hairs over what needs
12 to be presented to this Court today.

13 I will rest on what Dr. Faltas has presented on that
14 particular issue. She can file her request for
15 supplementals as you have indicated to her. But I believe
16 the two primary issues here are, first and foremost, the
17 motion for recusal and then the Brady motion issues. And
18 that's it, Your Honor.

19 THE COURT: All right.

20 All right. Mr. James.

21 MR. JAMES: Good morning, Your Honor. Marshall James
22 for the City of Columbia.

23 THE COURT: Good morning.

24 MR. JAMES: May it please the Court. As for the
25 motion to recuse, my reading of the transcript was a

1 little different from counsel's in that the transcript
2 evidenced that Judge Newman -- I didn't read that --

3 DR. FALTAS: Sir, I cannot hear Mr. James. If he can
4 speak a little louder and slower, please.

5 MR. JAMES: Yes, ma'am, I'm sorry.

6 My reading of the transcript, contrary to counsel's
7 reading of the transcript was not that Judge Newsome was
8 necessarily -- or had animosity for Dr. Faltas.

9 The transcript is evidence that he gave Dr. Faltas
10 every opportunity to make every argument that she wanted
11 to make, to call witnesses that she wanted to call and to
12 examine those witnesses. And he noted himself that,
13 generally speaking, motions for after-discovered evidence
14 take about ten minutes.

15 I think they took -- this one in particular took
16 around three hours. So I think the transcript is evidence
17 that he was very generous with Dr. Faltas in making sure
18 she got to say and argue all of the points that she wanted
19 to -- to make.

20 Furthermore, there is no evidence in the record
21 that -- that -- of bias against Dr. Faltas on Judge
22 Newsome's part. In Christensen vs. Mikell 324 SC 70, the
23 Court says, "It is not enough for the party seeking
24 disqualification to simply allege bias. The party must
25 show some evidence of bias."

1 There is nothing in the record from the Magistrate's
2 Court that establishes that Judge Newsome was biased. So
3 we ask that this Court deny Dr. Faltas' motion to recuse.

4 As far as the motion for after-discovered evidence,
5 we ask this Court affirm Judge Newsome's denial of
6 Dr. Faltas' motion for after-discovered evidence. It was
7 the correct decision.

8 As I'm sure the Court is aware, Judge Newsome's
9 denial should be reviewed for abuse of discretion, and
10 that's under State v. Irvin, 210 SC 549 at 545. In that
11 case, the Supreme Court in that case also says that grants
12 of motions for a new trial based on after-discovered
13 evidence are generally not favored.

14 There are five elements that Dr. Faltas is required
15 to establish, and they are all -- each and every one must
16 be established. And we ask that this Court affirm Judge
17 Newsome's denial based on the fact that he concluded that
18 none of the assertions of newly-discovered evidence that
19 Dr. Faltas made during the hearing met -- met the
20 requirements, and most of them were merely impeaching,
21 which is the -- which is the fifth -- the fifth element.

22 He identified about five different assertions of
23 newly-discovered evidence that Dr. Faltas made. The first
24 has to do with the document that opposing counsel
25 mentioned.

1 Dr. Faltas, at the hearing, produced no evidence that
2 the City withheld improperly a document. That was Judge
3 Newsome's finding. Dr. Faltas did not produce evidence
4 during the hearing to the contrary, so -- so that isn't
5 really after-discovered evidence that would be sufficient
6 for the opening of -- reopening of this case.

7 The second assertion of new evidence that Dr. Faltas
8 asserted had to do with Ms. Steele's medications and
9 whether or not she was on medications during her trial and
10 whether or not her doctor should have prescribed Paxil.

11 Well, that's not newly-discovered evidence. I think
12 Dr. Faltas says she either was on medications or she was
13 lying about the medications, but -- or the medicines that
14 she was taking, but as Judge Newsome concluded, she could
15 have crossed or examined Ms. Steele about these
16 medications when she was on the stand at -- at the trial.

17 The third assertion that Judge Newsome addressed was
18 the -- was Charlene Crouch's drunkenness charge and/or
19 conviction. Judge Newsome correctly pointed out that even
20 if Dr. Faltas wanted to, she would not have been able to
21 impeach Charlene Crouch on a drunkenness charge or
22 conviction.

23 I think at the time of the trial, it was merely a
24 charge, so she wouldn't have been able to question
25 Charlene Crouch about that -- that arrest. But even a

1 conviction is not impeachable. So that cannot be
2 after-discovered evidence.

3 Fourth, Dr. Faltas discusses or asserts that a letter
4 from Charles White -- I think as I understand the record
5 in which he says he would -- in exchange for her dropping
6 her subpoena, he would not testify against her. That
7 letter was a 2009 letter, which is four years, around four
8 years before the 2013 trial, so it can't be
9 after-discovered. In addition to which the judge
10 correctly pointed out that letter would have been hearsay
11 and not admissible in any event.

12 Finally, there was an assertion concerning
13 after-discovered evidence related to a Teresa Ingram, who
14 according to Dr. Faltas, received free rent in exchange
15 for alleged lies about her. Judge Newsome pointed out
16 that Teresa Ingram could have but did not testify at
17 trial, so that, too, could not have been after-discovered
18 evidence.

19 In the record at 135, he sums up by saying that
20 nothing in the record is after-discovered and everything
21 that she had presented was merely impeaching.

22 For that reason, Your Honor, the City asks that you
23 deny Dr. Faltas' motion. Again, the standard is abuse of
24 discretion, and motions to reopen for after-discovered
25 evidence are under South Carolina Supreme Court rulings

1 generally disfavored.

2 Thank you.

3 THE COURT: All right. Thank you, sir.

4 Mr. Addison, anything in reply?

5 MR. ADDISON: Your Honor, I would just reiterate that
6 I believe a complete reading of the record, it's clear
7 that there is enough bias with Dr. -- with Judge Newsome
8 to uphold the standard of whether the jurist has bias and
9 should recuse themselves.

10 As such, I believe that is the strongest point that
11 is made by this motion on appeal with Dr. Faltas' case, is
12 that there should have been a recusal by that judge, and
13 the case heard by a different judge.

14 THE COURT: Okay.

15 MR. ADDISON: For the system's sake, I believe that
16 should have occurred, Your Honor. Certainly --

17 THE COURT: I'm sorry? What was the last -- what was
18 the last thing you said? I'm sorry.

19 MR. ADDISON: I said for the system's sake, I think
20 to protect the integrity of our system, the judge should
21 have recused himself in that particular instance.

22 DR. FALTAS: Sir, may I --

23 THE COURT: Thank you, Mr. Addison.

24 DR. FALTAS: May I renew my motion to make an order
25 to supplement under Anders and Williams, please?

1 THE COURT: I'm not going to allow you to supplement
2 unless your lawyer has done so, and your lawyer has chosen
3 not to do so.

4 DR. FALTAS: I just wanted to keep my -- what is it
5 called in South Carolina, preserve my issues and as --

6 THE COURT: Well, you've raised that issue, and
7 you've preserved it. And I've ruled upon it, and that's
8 my ruling, okay.

9 DR. FALTAS: Yes, sir. Just because my understanding
10 is that it -- the preservation has to be done at the last
11 -- at the first chance and at the last chance, so -- so
12 that's -- that's why I'm doing that.

13 THE COURT: All right. And you have done that, okay,
14 Dr. Faltas.

15 DR. FALTAS: You're the judge. I'm not.

16 THE COURT: I'm just -- I'm just telling you, okay.
17 You've done it at the first and at the end, okay.

18 All right. That will conclude this matter today. I
19 will let you all know what my ruling is. There are a
20 couple of things I want to look at before I make a final
21 ruling on this.

22 But I want to thank both of you, all three of you
23 lawyers, for being in the courtroom. I apologize for any
24 misunderstanding as it relates to that, and I hope you do
25 accept my apology on that.

1 Mr. Addison, I appreciate you coming up from
2 Charleston today to address the issues that you have
3 addressed on behalf of Dr. Faltas.

4 And I will let you all know in the very near future
5 what my ruling is on these issues, okay.

6 Anything further --

7 DR. FALTAS: It's --

8 THE COURT: Mr. Addison?

9 MR. ADDISON: Thank you, Your Honor.

10 DR. FALTAS: Sir? As a --

11 THE COURT: Hold on.

12 Anything further, Mr. Addison?

13 MR. ADDISON: No, sir. I was just saying thank you.

14 THE COURT: Anything further, Mr. James?

15 MR. JAMES: No, sir. Thank you.

16 THE COURT: All right. All right. What was that,
17 Dr. Faltas? I'm sorry.

18 DR. FALTAS: If it pleases the Court, I had --
19 yesterday, I had a housekeeping question. Would there be
20 an -- a written order or a Form 4 order from yesterday,
21 and Mr. Griffith informed me that the State has requested
22 the transcript. So I just wanted the Court to make sure
23 that my side, the Applicant's side, gets a copy.

24 THE COURT: I'm sure Mr. Griffith will be in touch
25 with the Attorney General's Office to address that issue.

1 Okay.

2 DR. FALTAS: So will be there be an order -- would
3 there be an order from yesterday? Because I mean, I can't
4 appeal an oral ruling.

5 THE COURT: I will issue some order as it relates to
6 that.

7 DR. FALTAS: Thank you, sir.

8 THE COURT: All right. Thank you all again. I won't
9 -- this will conclude the matter.

10 Ms. Ambroziak, I thank you for being there today and
11 helping us out on that, and I apologize for any
12 miscommunication as it relates to what happened this
13 morning. Okay.

14 THE COURT REPORTER: That's fine. Not a problem.

15 THE COURT: Thank you all. You all have a good
16 weekend.

17 (Whereupon, the proceedings were concluded.)

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