

THE STATE OF SOUTH CAROLINA

No. 2022-000339

Before the South Carolina Court of Appeals
(as Transferred from the Supreme Court of South Carolina)

APPEAL from RICHLAND COUNTY Court of COMMON PLEAS
D. Craig Brown, Former/Resigned Circuit Judge, Case No. 2019-CP-40-01374,

Which is an Appeal from Richland County (Dentsville) Magistrate Phillip F. Newsom ("DMN")
As transferred to DMN from the City of Columbia's Municipal Court ("CMC")
Summary Court No. L066971

City of Columbia, SC,

Respondent

RECEIVED

v.

Marie Assa'ad-Faltas, MD, MPH,

Appellant.

NOV 06 2023

SC Court of Appeals

APPELLANT'S *provisional* FINAL BRIEF

Sincerely submitted and served on 6 November 2023, God willing, by:

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Statement of Issues on Appeal¹ {Rule 208(b)(1)(B), SCACR}

- 1.** The U.S. Constitution admits two, **not more**, sovereignties: federal and state or tribal nation. Political subdivisions do not partake of state's sovereignty. Only a sovereign may criminalize conduct and prosecute/punish crime. The conviction below is void *ab initio* as the City of Columbia, SC ("*the City*"), a non-sovereign, may not own or operate a court. *The City's* Municipal Court ("CMC") is created by state laws repugnant to the U.S. Constitution; all CMC's acts, including Marie Assa'ad-Faltas, MD, MPH's ("Dr. Faltas") conviction, are nullities at law.
- 2.** Dr. Faltas was tried, convicted and sentenced, per City ordinance 14-31 which was then preempted by § 16-3-600 (E)(3), SC Code of Laws, anyway.
- 3.** All proceedings held when 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.
- 4.** *Brady* violations deny due process to a criminal defendant. *A priori* "disfavor" of reopening criminal conviction, even when based on after-discovered evidence which had been withheld in violation of *Brady*, is **plain error because it "disfavors" due process itself**.
- 5.** A motion to reopen per SC Crim R 29(b) is part of criminal adjudication, thus subject to the Sixth Amendment's guarantees of speedy adjudication and compulsory process. A court unable/unwilling to meet a party's stated compulsory-process needs *in any context* denies due process by adjudicating the matter *without the aid of compulsory process*.
- 6.** DMN and SC Circuit Judge Brown *plainly* 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.

¹ An answer in Dr. Faltas' favor on any issue obviates the need to reach higher-numbered issues. *Initial hearing en banc* to harmonize *seemingly* conflicting decisions is respectfully requested on any issue.

7. SC Circuit Judge Brown erred in affirming DMN's equating his own (erroneous at that) understanding of trespass law with what a witness against a criminal defendant *right or wrong may have actually believed is the power of a landlady to issue and enforce* trespass notices.
8. SC Circuit Judge Brown erred in affirming DMN's refusal to: (a) see the case *in the new light* of the *cumulative effect* of after-discovered evidence, and (b) understand that after-issued adjudications *of facts in existence at the time of trial* **are** after-discovered evidence.
9. Governments have no *legitimate* interest in finality of unconstitutional convictions. Once a conviction *appears* unconstitutional, the speediest approach to relief should be taken.
10. A *sine qua non* of due process is a disinterested/unbiased adjudicator. *All* adjudicators below had personal biases/interests against Dr. Faltas. Scrutiny of summary-courts' procedures and outcomes is constitutionally-mandated and necessary for public confidence in, and satisfaction with, the judiciary and the state's exercise of its police powers.

Statement of the Case {Rule 208(b)(1)(C), SCACR}

Herein appealed are: (1) Former/Resigned SC Circuit Judge Brown's ("FJDCB") affirmance of DMN's denial of Dr. Faltas' timely motion to reopen, based on after-discovered evidence, her 25 April 2013 conviction of "simple assault" and (2) FJDCB's denial of Dr. Faltas' timely Rule 59(e), SCRCP, motion. A chronology of uncontested or record-proven facts follows.

On 25 March 2009, Dr. Faltas, then a tenant in one of Dinah Gail Steele's ("Steele") two rental quadrplexes of 300 and 304 Byron Road, Columbia, SC 29209 ("the Byron quadrplexes"), filed in Richland County Circuit Court ("RCCC") of Common Pleas ("CP") against Steele and others a suit alleging *inter alia* that Steele discriminates by race and national origin against Dr. Faltas in housing terms and conditions and is tortiously interfering with her plans to build on vacant land ("the 324 Byron

lot") adjacent to the Byron quadriplexes a single-family house for her and her mother.² Dr. Faltas had closed on what became the 324 Byron lot on 3 March 2009 after having obtained permits to subdivide it from a larger property, build a single-family house on it, and assign it a street address. Steele discovered the purchase on 12 March 2009 and *later that night* sent her consort, Larry Wayne Mason ("LWM"), to "knock hard" on Dr. Faltas' door and, when she did not open it, slide under it *an LWM-issued* "eviction order." (Transcript of 10 November 2009 hearing before then-RC Magistrate Michael R. Davis at the Lykesland, RC, office ["Magistrate Davis"] available on RC Public Index). In April 2009, Steele filed *pro se* to evict Dr. Faltas, who answered and requested trial by jury. In April 2009, Dr. Faltas discovered that the sewer lines from the Byron quadriplexes to *the City's* main had been run across and under what became the 324 Byron lot *without* easement, prescriptive or permissive. (Complaint in in RCCCCP case 2009-CP-40-02219, RoA Vol IV pp 33-44) Steele and each set of defendants in RCCCCP case 2009-CP-40-02219 were represented by different insurance-hired lawyers all of whom insisted they do **not** represent Steele in the eviction case. At 7:11 pm on 11 September 2009, Steele called 911 claiming Dr. Faltas is on trespass from the Byron properties but "came over," "harassed" and "pushed on me again." (Transcript of 25 April 2013 trial ["2013-04-25 Tr."] p 25 = RoA Vol VI pp 68-92)³ Columbia's Police Department ("CPD") arrived; Steele told them that Byron quadriplexes tenants {Charlene Crouch ("Crouch"), Teresa (aka Therese, Theresa, Teresa Felicia, Nikki, Nikki Icecream, *etc.*) Ingram (aka Ingram-Jackson, Jackson, Hampton) ("Ingram") and John Mitchel Jones ("Jones")} are eyewitnesses. (RoA Vol I p 95) Steele became "**livid**" that CPD did not arrest Dr. Faltas there and then (2013-04-25 Tr p 32:6-7 = RoA Vol VI pp 68-92) but took a report and told Steele to use it for a courtesy summons against

² On 20 November 2009, Dr. Faltas moved to add to her 2009-CP-40-02219 complaint defendants, including *the City*, and causes of action, including uncompensated takings by *the City* and harassment by Steele and LWM. *Id.* On 5 May 2010, then-SC-Circuit-Judge J. Michelle Childs allowed all proposed additions.

³ For clarity, each transcript is named by date in year-month-day format. For ease of location, *both* transcript and ROA page numbers shall, God willing, be cited with the equal sign between them.

Dr. Faltas. (RoA Vol I p 95) A 2 October 2009 trial date in CMC was set for Dr. Faltas; she timely appeared and requested trial by jury.⁴ Trial was reset for 17 November 2009.

Meanwhile, Steele egged CPD to charge Dr. Faltas with the more serious 1st-degree-harassment. Then-CPD-Investigator Amanda Star Blanton ("Blanton") favored Steele's request and contacted then-assistant-SC-5th-judicial-circuit-solicitor ("AS5JC") 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 Vol III pp 96-98, Vol IV pp 45-46, and Vol V pp 72-73).

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 Magistrate Davis by: (1) Steele, (2) LWM, (3) Jones, and (4) Ingram. Magistrate Davis held a hearing on 10 November 2009 and recorded it on four magnetic audio cassettes.⁵ On 17 November 2009, Blanton finalized a "case summary" for CPD's then-Chief Tandy Carter ("CPD's Carter") to approve Dr. Faltas' arrest for first-degree harassment. (RoA Vol IV pp 8-14) That day, Dr. Faltas appeared at CMC for her jury trial on the "simple assault" charge. (Transcript of CMC 17 November 2009 event ["2009-11-17 Tr."] = RoA Vol IV pp 15-32)⁶ But then-Columbia-Assistant-City-Attorney ("CACA") David A. Fernandez ("Fernandez") had no witnesses and feigned ignorance of why Dr. Faltas was there. *Id.* Dr. Faltas responded that she had been summoned for trial but had not received *any* answer to her *written* Rule 5/*Brady* requests and moved to dismiss. *Id.* and RoA Vol IV p 5, and Vol V pp 1-4, 22-32, and 35-49).

⁴ That day, Dr. Faltas 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."] = RoA Vol IV pp 48-59).

⁵ The audio was later separately transcribed by Dr. Faltas and by COMPUSCRIPTS which Weiss hired for that without *then* disclosing that transcript order to Dr. Faltas. ("2009-11-10 Tr." available on RC Public Index ("RC PI" in related PCR case 2019-CP-40-00112 among exhibits to motions to relieve counsel)

⁶ That hearing was *later* transcribed by CMC employee Nancy Ahrens from audio made by CMC. CMC's transcripts are all-upper-case type. Dr. Faltas usually gets her CMC transcripts optical-character-read ("OCR-ed") then extracts the text and converts it, *without altering the words*, into sentence casing.

The 2009-11-17 Tr. shows Marion Oneida Hanna ("Hanna") presiding at CMC and *twice* threatening Dr. Faltas with contempt because she had corrected CACA Fernandez's false assertion that discovery had been given to Dr. Faltas. Finally, *some* documents were given to Dr. Faltas; Hanna recited their nature on the record. *Id.* They did not include: (1) **any** medical or psychological examination of Steele or any of her witnesses; (2) **any** criminal records of Steele or any of her witnesses; and (3) Blanton's "case summary," *supra*.

On 1 December 2009, SC Circuit Judge Lee heard Dr. Faltas' motion for a preliminary injunction in 2009-CP-40-02219 but took it under advisement. (Order for Preliminary Injunction, RoA Vol IV pp 81-89; complete transcript available as exhibit in SC Appellate Case 2019-000708).

On 2 December 2009, CPD and Blanton arrested Dr. Faltas on two harassment warrants, one pretended by Steele, one by Ingram. (RoA Vol IV p 47) In Dr. Faltas' bond hearing before CMC's Barabara Jean Burns ("B.J. Burns") that day, Weiss disclosed she caused *the* City to delay trial on the trespass/assaults charge against Dr. Faltas lest acquittals cause Steele's harassment charge against Dr. Faltas to crumble. (2009-12-02 Tr = RoA Vol IV pp 48 -59)

[D 01:02] **B.J. Burns:** [H]ave you gotten a letter yet about the jury trial on the simple assault?

[minute D 01:09] **Dinah Gail Steele:** No, Your Honor.

[min D 01:10] **B.J. Burns:** When it's coming up, were you at the bond setting for that?

[minute D 01:12] **Dinah Gail Steele:** There was none. They didn't set up a bond for her on that.

[D 01:16] **B.J. Burns:** On a simple assault charges, they set a bond; they might have set a, a summons --

[minute D 01:22] **Dinah Gail Steele:** (interposing) She just automatically, hmm, went for a jury trial * * *
* * [minute D 01:29] And we just left the courthouse.

[D 01:35] **B.J. Burns:** [....] It just hasn't come up yet?

[minute D 01:36] **Dinah Gail Steele:** No, ma'am.

[minute D 01:38] **Assistant Solicitor Weiss:** [... I]t's *certainly all encompassed in these charges as well. So, as a solicitor, I've become wary of trying the individual charges that ended up underlying whether the City has cause for the harassment charges*, Your Honor.

[D 01:55] **B.J. Burns:** [... I]f [...] a PR bond had been set on the simple assault [...], then I would reset that bond or revoke that bond. [minute D 02:08] Hmm, is that what you're saying: let's don't, let's don't worry about this now? [D 02:16] * * * * * If it's a courtesy summons * * * * * I just wanted to know: had it been adjudicated[.]

[minute D 02:29] **Dr. Assa'ad-Faltas:** Actually, Your Honor, ---

[D 02:31] **B.J. Burns:** (interposing) No, ma'am. When I, [...] I am going to give your a chance to say something. [D 02:38] But I don't want you to say anything that's gonna ---

[minute D 02:42] **Dinah Gail Steele:** (interposing) **She's also been notified like *twenty times with certified letters*, notifying her [...] we know that she is stalking and harassing these people, hmm, *notified by certified mail over twenty times.***⁷ [minute D 03:03] So, it wasn't like [...] this is a big shock to her.

[D 03:11] **B.J. Burns:** Solicitor, do you have any other criminal record more than what I have here maybe?

[minute D 03:18] **Assistant Solicitor Weiss:** No, Your Honor.

Dr. Faltas bonded out, chose to proceed *pro se* with stand-by counsel, and sought to lift all her bond conditions. Then-SC-Circuit-Judge George C. James, Jr. ("Jurist James"), sitting in RCCC of General Sessions ("GS") on 17 December 2009, heard Steele in person opposing bond modification, reduced *only* part of Dr. Faltas' excessive monetary bond, and left all other conditions in place. Dr. Faltas sought reconsideration. ("2009-12-17 Tr." = RoA Vol IV pp 60-80) Jurist James set a 7 January 2010 hearing in Sumter, SC. ("2010-01-07 Tr" = RoA Vol IV pp 90-98) Weiss claimed Steele was absent due to "difficulties":

[page 14:4-16] **Ms. Weiss:** [... [lines 6-10]] In the courtroom today are Larry Mason and Teresa Ingram. Teresa Ingram is one of the named victims. Larry Mason is the husband of one of the other victims. * * * * [12-16] They are on the back row Your Honor with my Victim Advocate and the investigator in this case, Investigator Blanton from the City of Columbia in case you need to hear from her. **And the other victim Donna [sic] Steele Mason [sic] had some difficulties yesterday and ...**

[17] **The Court:** With who?

[18-20] **Ms. Weiss:** With some stress and had to seek medical attention and was unable to be here today, but her husband is here on her behalf.

[21-22] **The Court:** Is that the lady who spoke at the last hearing?

[23 - page 16:4] **Ms. Weiss:** Yes, Your Honor. * * * [T]he preliminary injunction order by Judge Lee that the Defendant is ask you to consider is currently under reconsideration filed by Andy Delaney, the attorney for the Defendants, the Masons in that case. So that's currently under reconsideration. After being filed by Andy Delaney on that case. [...]

And Dr. Faltas responded:

[page 23:3-12] **The Court:** [...] If I did [lift this restriction], would you [...] park in your space and go in your apartment, sleep, eat and come back out [...] wherever you go the next day. [...] W]ould [you] take photographs, talk to anybody else on the premises or do anything?

[13-23] **Dr. Faltas:** No, because there is a restraining order in place from the magistrate. [...] [T]he other thing is, **she**

⁷ Steele's and LWM's 20+ letters to Dr. Faltas in Fall 2009 were admitted in the 1 December 2009 hearing before SC Circuit Judge Lee, who accepted them **as evidence of Steele and LWM harassing Dr. Faltas, *not the reverse***. 22 December 2009 ORDER FOR PRELIMINARY INJUNCTION, *supra*.

says that Ms. Steele had to be treated yesterday for some kind of stress. Well, I've been away for forty days now. ***So if she's having stress, it's because of something else.*** So my putting, their putting me away didn't help whatever claim Ms. Steele has of stress. If she suddenly, after my being forty days away from my apartment, she's suddenly being yesterday treated for stress, then she has other reasons of stress and ...

[24] The Court: [interposing] Thank you.

On 11 January 2010, Dr. Faltas received from Weiss what was claimed to be *complete* harassment-cases discovery, which for the first time *ever* disclosed Blanton's 17 November 2009 case summary **BUT did not include the 21 December 2009 "victim impact statement" form ("VISF") which Steele filled out and signed as the alleged "victim" of Dr. Faltas.** In her VISF, Steele **denied** having obtained medical attention and did not seek any. Two harassment indictments issued mid-January 2010; and the GS trial *for both indictments* was set for 22-26 February 2010 (RoA Vol 5 pp 5-21). But Weiss insisted on calling only the case pretended by Ingram. 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, pp 19-21 *infra*. The two *other* misdemeanors (trespass and *this* case) pretended by Steele against Dr. Faltas in September 2009 **plus** an unlawful-use-of-telephone charge (a pretext to arrest Dr. Faltas *again* on 12 December 2009)⁸ were called on 3 March 2010 before then-CMC's DeAndrea Benjamin ("Jurist Benjamin"). Again, CACA Fernandez had no witnesses; and Dr. Faltas complained of incomplete/absent discovery in those cases. Jurist Benjamin ordered discovery completed within 30 days. (CMC 3 March 2010 transcript ["2010-03-03 Tr."] = RoA Vol V pp 28-32 and 35-47) But CACA Fernandez brazenly, *in writing in April 2010, denied the hearing had even occurred.* (RoA Vol V pp 48-49)

⁸ Thank God, on 6 October 2010, Dr. Faltas *pro se* got the 12 December 2009 unlawful-use-of-telephone charge dismissed and pressed for dismissal or speedy trial of the others.

Dr. Faltas saw Steele's 21 December 2009 VISF **for the first *and only* time on 12 November 2010 while reviewing "two bankers boxes" of discovery Weiss had transferred to the City after Weiss "remanded" the harassment charges to CMC on 31 August 2010.** (Audio and *partial* transcript of Dr. Faltas reviewing "two bankers boxes" at CMC, RoA Vol V pp 60-71) CMC and CACA Fernandez *refused* to make a copy of that document for Dr. Faltas, who still read those documents into the cassette player she had taken to the document inspection:

1:43:09 to 1:44:48, Marie: There is a file that says "Charlene Crouch Statement and Report." And there is, apparently someone looked her up "research under secure access, 11/11/2009, 4:46:19 pm." And it has her arrest for simple possession of marijuana and her arrest for drunkenness and her picture. And I do definitely need a copy of that. And I want to put on the record that the date of it was 11/11/2009. That was never produced to me before; and it's very important that it shows Blanton Also in that file, there is a statement by Charlene Crouch and a sticky, a yellow sticky note that says "care to make report." Obviously, whoever prepared that knew that Charlene Crouch does not care to make report but knew that she has a bad arrest record. Other statements, there is one that's supposedly signed by Rodney Ingram and another that's supposedly signed by Alden Wheeler. I just would like copies of these two statements.

1:44:56 to 1:47:58, Marie: There is a file called "Dinah Steele Mason Statement and Report." There is a fax dated 10 slash 08 slash 2009 at 15:18. It has page 6-8 to Gwedolynn Bouie from Dinah Steele. I do not have that. I need a copy of it. Another titled from Dinah Steele to Lynn Matthews. I need that. There is a "South Carolina Victim Impact Statement" that is filled by Dinah Steele and claims that Larry Mason is her representative and husband; and her e-mail address is Noble-Blond@BellSouth.net. She lists four telephone numbers: 800, 803-600-5953, 803-787-4454; and again 803-600-5953 and 803-331-1000. It is signed apparently before Francis Reynolds on the front and back. It says: "Did you suffer any physical injury?" And the answer is "NO." Then "Have you noticed any change in your life style since this happened? This may include personal habits, close relationships, the amount of tension and nervousness or your ability to work. Please describe." It says "weight loss" comma "mental and emotional strain" and it's signed on 12/21/2009. I do need a copy of that. "Did you receive any mental health counseling as a result of this crime?" The answer is "NO." And it continues: "If not, are you interested in receiving counseling?" It is left blank. I definitely need a copy of this front and back.

Both first-degree harassment charges against Dr. Faltas were **dismissed *with prejudice* on 13 August 2012, thank God (RoA Vol V p 70)** after having been *illegally* remanded over Dr. Faltas' objection to CMC, where they sat for *two years* and only got scheduled after SC's Office of Court Administration's ("SC OCA") pressure. The simple assault case against Dr. Faltas was not called

for trial until 25 April 2013,⁹ **only after then-SC-Chief-Justice Toal (“Jurist Toal”) in her administrative capacity** issued her 7 March 2013 ORDER for all Dr. Faltas’ CMC cases to be brought to “expedient” resolution by then-CMC’s Carl L. Solomon (“Esq. Solomon”) (RoA Vol I p 94).¹⁰

By then, all three Steele’s tenants she had listed as eyewitnesses to the alleged assault had been extra-judicially evicted from the Byron quadriplexes; **but only Crouch needed 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” White’s one-bedroom apartment (Crouch’s pretext)** (Charlie White’s 2007 complaint against Crouch (RoA Vol III pp 64-95), Charlie White’s 17 March 2011 audio-recorded testimony, and Crouch’s testimony in 4 February 2019 hearing before DMN (“2019-02-04 Tr.”) pp 89-94 = RoA Vol VII pp 18-62). Jones and Ingram had been thoroughly discredited in and after Dr. Faltas’ 22-26 February 2010 GS trial. **In 2012, Crouch had been arrested for a 23 December 2011 sexual battery on a vulnerable adult, functionally equivalent to a child, to which Crouch pled guilty (invoking the drunkenness excuse) on 11 July 2013, SC 5th JC case I902825 (assault and battery, 2nd degree).** (RoA Vol II p 5, and Vol VI pp 1-5 and 54-67) On 22 April **2012**, Crouch was for public drunkenness arrested *in the Byron quadriplexes* and given notice to not return there (RoA Vol II p5). Her guilty disposition was entered in CMC on 18 May 2012 (RoA Vol VI pp 93-95) **but not to this day reported to SLED or placed on RC PI. (RoA Vol V pp 74-79)**¹¹

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 Vol VI pp 9-53) 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,

⁹ In the interim, Dr. Faltas was *thrice more* brutally and falsely arrested and given five contempt pronouncements, all to thwart her efforts for speedy retrial or dismissal. *Vide* generally C-Track 2019-000708.

¹⁰ That ORDER was probably catalyzed by Dr. Faltas’ *federal habeas* applications for speedy trial of the charges pending against her in CMC. Said applications were deferred to exhaustion of state remedies.

¹¹ Crouch benefited from that *artificial* absence, not expungement, from the public record of *that* conviction; *e.g.*, in her 11 July 2013 sentencing for 23 December 2011 assault and battery, 2nd degree, her “priors” did not include it. (Crouch GS 2013-07-11 Tr. pp 8-9 = RoA Vol VI pp 54-67)

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 1902825** (RoA Vol V pp 80-84 and Vol VI pp 1-4). Dr. Faltas' then-forced lawyer Theodore N Lupton ("Esq. Lupton") had, on 24 January 2013, sent then-CACA Fernandez Rule 5/*Brady* requests including "all results of all physical and mental examinations of persons related to this prosecution." (RoA Vol II pp 6-9 and Vol VI pp 6-8) **No medical, psychological or psychiatric reports on Steele were produced.**

In Dr. Faltas' 25 April 2013 trial, Steele blurted "I am *still* on medication ***today***." (2013-04-25 Tr p 21:1-9, = RoA **Vol VI pp 9-53**) (which caused Dr. Faltas to gasp audibly) and insisted it is "because of this." (2013-04-25 p 29 = RoA **Vol VI pp 9-53**) 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. Steele lives 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, 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 (**2019NI4000026** and **2019CP4005004**), and whose younger son, Christopher James Mason ("CJM") died in 2022 (**2022CP2800139**) of causes apparently related to addiction after having been incarcerated in December 2021 for cocaine possession (**2019A2210700145**). Although LWM almost contemporaneously *publicized* RWM's purported suicide in LWM's medical malpractice suit against RWM's psychiatrist (**2019NI4000026** and **2019CP4005004**), Dr. Faltas was *emphatically* prevented from asking 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 Vol VII pp 18-62) Steele said 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 85:20-21 = RoA Vol VII pp 18-62. But Dr. Faltas was not allowed to follow up or argue the utter incredibility of Steele's distress claims *which supposedly last years with medication* and recur whenever she sees Dr. Faltas *in court*. In Dr. Faltas' 25 April 2013 trial, (Tr. pp 28-32 = RoA Vol VI pp 9-53) Steele said it was *the thought of going to Sumter, SC*, on 7 January 2010, which "broke" her:

- [page 28:6-7] **Q.** (by Mr. Lupton) So, what you said was she came over here and harassed me and pushed on me? [8] **A.** Yes.
- [9-10] **Q.** And in that recording you didn't say anything about being injured or hurt, correct?
- [11-13] **A.** No, I was not -- I didn't have any marks on me. **I ended up with no bruises except, like I said, I ended up having a nervous breakdown but I wasn't cut.**

- [14-15] Q. You are not trying to say that that nervous breakdown was solely related -- was caused by this, are you?
- [16-23] A. I would say collectively that was the last straw. * * * I feared for my life. By that time I was already fearful of going over to that apartment complex because of Marie. I was harassed continuously. Every time I went over there she called the police on me. Every time I went over there to do the maintenance, to cut grass she called the police on me. This was escalating out of control.
- [24] Q. So you didn't have a nervous breakdown caused by this event?
- [25] A. I would say it was partly -- yeah, yeah. I would say yes.
- [page 29:] Q. You had it because of this? [2] A. Yes, I was assaulted, my man.
- [3-4] Q. And **you talked about you are still on medication from it?** [5] A. Yes.
- [6] Q. And you went to the doctor? [7] A. Yes.
- [8] Q. And got medication for it? [9] A. Yes.
- [10-12] Q. And do you recall testifying two months after this at a [...] magistrate's court, a restraining order hearing? [13] A. Yes.
- [14-15] Q. And do you recall at that time saying you did not go to a doctor?
- [16] A. No, I went in January. I ended up going in January.
- [17] Q. So you didn't go to a doctor- [18] A. Not that night.
- [19] Q. You didn't go to a doctor until January of 2010?
- [20] A. '10, yeah. Yeah, that's when I ended up going. This was all --
- [21] Q. At the [...] November 10, 2009, hearing -- [22] A. Still hadn't gone to the doctor then.
- [23] Q. You testified that you hadn't gone to a doctor? [24] A. No. Huh-uh, I hadn't.
- [25] Q. You testified you were not taking any medication? [page 30:1] A. Not then I wasn't, no.
- [2] Q. So not until January or some time after that?
- [3-13] A. Right. That was after four times she went to different judges trying to get this thing, this trespass thing where she could come back onto the property and I ended up going trying to -- **they wanted me to go to Sumter to have another hearing** and, like I said, this isn't my playground, I don't know what all the rules are **but I was livid that I was going to have to go to Sumter to defend myself in court and it was a traveling judge. That's what I didn't understand. And then I just -- I couldn't handle it any more.** I just absolutely -- all the harassment, the assault, just non-stop harassment every time I went there. She harassed me to no end along with all the tenants and, yeah, **I broke. In January I just broke.**
- [14] Q. So you broke in January? [15] A. Yes.
- [16] Q. But at 7:11 on September 11th? [17] A. Right.
- [18] Q. She pushed on you? [19] A. Yes.
- [20] Q. Officer shows up about 7:20, correct? Thereabouts? [21] A. Yeah.
- [22] Q. And he talks to you? [23] A. Yes.
- [24 - page 31:1] Q. And after you've talked to him the statement from you is that he writes down is that you are saying it was a very hostile and very violently pushed. [2] A. It was.
- [3-4] Q. So it's changed from just pushed on me to very hostile and very violently and said it was in the upper chest with an open hand? [5] A. Yes.
- [6-7] Q. And the officer -- you told the officer about all your witnesses?
- [8] A. Yes. There were two witnesses.
- [9] Q. And the officer only listed one witness? [10] A. Yes.
- [11-12] Q. So you say that you told everybody, talked to him about all the witnesses but he only lists one?

[13-14] **A.** I don't know what he wrote down but there were two witnesses, yes.
 [15] **Q.** And you testified today that there were two witnesses? [16] **A.** There were.
 [17-18] **Q.** You testified on November 10th, 2009, that there were three witnesses.
 [19-20] **A.** Well, Mr. Charlie came around the corner. I can't say to what he said he saw. [...]
 [22] **A.** He was there. He was there.
 [23-24] **Q.** You said under oath on November 10th, 2009, that there were three witnesses?
 [25] **A.** Yes. Mr. Charlie did come around the side of the building.
 [page 32, lines 1-2] **Q.** But the officer didn't take any statements that day on September 11th?
 [3] **A.** No, he just took my statement.
 [4] **Q.** He wrote the report based on what you said? [5] **A.** He did, yes.
 [6] **Q.** But he didn't arrest anybody? [7] **A.** No. I was livid about that.

Appellant's Interpretation of the Uncontroverted Facts

Steele's story defies reason and self-respect: her home was *and still is* Elgin, SC; her only links to Columbia, SC, are the Byron quadriplexes; she did not "*have to go to Sumter*"; Weiss, Blanton, SC 5th JC's victim advocate Reynolds, Ingram and LWM, went to oppose bond modification; **nor was 7 January 2010 hearing in Sumter set for Steele "to defend [her]self against anything. Dr. Faltas was the defendant against criminal harassment charges urged by Steele.** What Steele sells as harassment is **Dr. Faltas' calling police** when Steele went to the Byron quadriplexes. **That is the opposite of cause for Steele,** a white woman naming herself "noble blond," to "**fear for [her] life.**" (RoA Vol II pp 1-4) A harasser would *never* call police to see him/her harm Steele's "life"; if Steele thought *the police* would take her life, she would not have called them on 11 September 2009.

The one-page letter Dr. Faltas gave Steele that Friday, 11 September 2009, evening asked Steele to *not go into Dr. Faltas' apartment. Steele tried to go to Dr. Faltas' apartment on Monday, 14 September 2009; but Dr. Faltas would not open her door.* (2009-11-10 Tr. pp 130-31).

The City, Weiss, Blanton, LWM et al., expected Dr. Faltas to crumble at her on 2 December 2009 arrest. She did not. They arrested her again on 12 December 2009. Her opposition to frame-ups grew.¹² Weiss then knew she had to try the cases. But Steele and *the City* had no *true* evidence; so, they resorted to delay. Dr. Faltas sought and was granted a speedy trial.

¹² **REMEMBER: Dr. Faltas was, thank God, ultimately fully exonerated of all charges underlying those arrests (RoA Vol V p 85).**

Pre-trial, **Weiss** saw Steele's 21 December 2009 VISF (**presumably still in *the City's* possession**) denying physical or mental effects and **hid it from discovery**. Dr. Faltas wanted the horrendous conditions of her bond, **for charges from which she is innocent**, lifted. Steele, **who gets "livid" at every missed chance to arrest and abuse Dr. Faltas**, panicked that an at-large Dr. Faltas will find the skeletons (*e.g.*, of Ella Faye Kizer Mason {RoA Vol IV p 1}) in Steele's and LWM's closets.

Either "the doctor" Steele saw found no need for medication, or Steele did not see a doctor **in or after January 2010**. Either possibility explains **both** Weiss', and later *the City's*, failure to produce mental records, if any, of Steele; **and** Weiss' refusal to call the case pretended by Steele against Dr. Faltas on 22-26 February 2010. Judge Newman, *père*, would not have allowed "broke down" and "on medication" testimony without supporting records produced. His Honor, unlike Esq. Solomon and Weiss, was not employed by, or a clandestine recipient of, payments from, *the City*. *Shortly* after mistrial on the harassment charge pretended by Ingram, Dr. Faltas did more research and pressed for speedy retrial of that charge and speedy trial of the one pretended by Steele. After Weiss' post-mistrial intimidation and delay tactics failed, she illegally "remanded" the harassment charges to CMC, which (even if *arguendo* a real court) had no jurisdiction over them. The CMC-level charges from September 2009 had sat untried till then-SC-CJ Toal's 7 March 2013 ORDER, p 12, *supra*. **What could *the City* do then?** Why, clean up the criminal record of a pretend-witness (Crouch) still left under Steele's thumb, of course.

Persistent absence of Crouch's public drunkenness conviction from *public* records, ***even after*** then-CMC-Chief Turner's 21 January 2014 letter to Dr. Faltas acknowledging that conviction's existence **and copied to SC Circuit Judge Lee, to jurist Toal, and to then CACA Fernandez** (RoA Vol VI pp 93-95), 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. *Vide* fn 11, *supra*.

Weiss' and then-CACA Fernandez' acts/omissions to have at least one criminal charge by Steele "stick"¹³ against Dr. Faltas after she was exonerated of other Steele-caused charges are jointly-and-severally attributable *Brady* violations. *Brady*, not generic *civil* precedents, controls here. ***Brady* covers both exculpatory and impeaching evidence relevant to guilt or sentencing.** Dr. Faltas, even if *arguendo* guilty, is a first-and-only-one-time offender; but was sentenced to the maximum in CMC's power on a charge and 2/3 the maximum on another. **Undeniably, Steele's claims of "nervous breakdown" requiring 40-month "medication" affected sentencing.**

When pressed at the 4 February 2019 hearing, Steele testified she got a 3-day supply of Paxil from an *unidentified* "emergency" room but continued to receive Paxil prescriptions from her "primary care provider."¹⁴ Not only was "mental" 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. Evidence impeaching, or allowing Defendant to investigate, that claim is classic *Brady* material. Without the improperly-withheld *Brady* material, **the Prosecution successfully but falsely portrayed: (1) Steele as Dr. Faltas' long-suffering victim pushed to "nervous breakdown" and "medication" and (2) Crouch as a person of good character with "no dog in the fight" (2013-04-25 Tr p 88 = RoA Vol VI pp 9-53) 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. Steele and Crouch were the only prosecution witnesses.** In the new light of after-discovered evidence, **had *Brady* material been timely disclosed,** Steele would have been seen as a liar/*extreme* exaggerator who had suborned her then-tenants for perjuries against Dr. Faltas (who was nonetheless, thank God, fully exonerated of the other criminal charges Steele had tried to frame Dr. Faltas in); and far from an honest, neutral bystander, Crouch would have been seen as a sexual molester, habitual drunkard and thief.

¹³ "The city needs a conviction" then-CACA Fernandez wrote to Esq. Lupton in February 2013. *Vide generally* C-Track 2018-001290, the State's Appendix to its petition for writ of *certiorari*.

¹⁴ At a minimum, Dr. Faltas should have been allowed to learn the name of, and *subpoena*, that primary care provider **who could not possibly have been forgotten by Steele**, who vowed to return to that provider for more Paxil. (2019-02-04 Tr. = RoA Vol VII pp 18-62)

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 strong motives to please Steele and trade for leave 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 (RoA _). Charlie White's money and Steele's indulgences were crucial to Crouch's survival. **With all the improperly-withheld/lied-about facts brought to light, no reasonable fact-finder would have credited Steele's victimhood story.** But the *correct* standard does not demand that much; all that is required is for confidence in the conviction/sentence to be undermined.

ARGUMENTS

This four-thousand-year-old picture **may be** worth four million *unspoken* words. A pattern as old as that papyrus is a lie requiring 10 to cover it up, then 100 to cover the 10 up, *ad infinitum*.



Lies, not truth, are growing in this world. Speech distinguishes humans from animals. If lying becomes usual and accepted, all information conveyed by speech loses its credence; and speech loses its value. A court who contorts itself into reasonless opinions, then hides them in unpublished cases/unposted entries, **all to encourage *the City, Weiss, Steele et al.*, to keep lying until Dr. Faltas gets too exhausted to expose them,** hammers nails into the coffin of truth.

STANDARDS OF REVIEW

Review on all the issues should be *de novo*. Even where Respondent *might* urge review is for abuse of discretion, Dr. Faltas counters that any exercise of discretion below was controlled by errors of law; and such errors should be reviewed *de novo*. As *federal* due process rights are denied by *Brady* violations, relevant U.S. Supreme Court holdings bind this Court; and relevant U.S. Court of Appeals for the Fourth Circuit holdings should, at a minimum, persuade this Court. Review of Dr. Faltas' novel arguments should credit her history of innovation; *e.g.*, at the end of the 22-26 February 2010 GS jury trial,¹⁵ Judge Newman, *père*, presiding:

[17 - 18]

(Whereupon, the jury was brought into open court at 9:46 p.m.)

[19 - page 721:3] **The Court:** [... Y]ou 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. [...] If you do not agree on a verdict in this case, I must declare a mistrial. [...] 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. [...] 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 [...] 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: 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.

¹⁵ As with everything related to the false charge there tried, Weiss denied 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. This excerpt is from a later-ordered transcript of post-testimony motions, closing arguments, jury charges, Allen charge, and mistrial declaration. This transcript starts at page 1 but follows 1,076 chronologically preceding pages. (RoA Vol V pp 53-39)

[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. [...] We have 12 [...] 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[.]

[24 - page 76:1] **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. [...] I understand your position, and it's well stated in the record [...]. * * * * *

[page 76:16- 15] **The Court:** The note says, "**This jury cannot come to a unanimous verdict.**" What says the State?

[18 - 21] **Ms. Weiss:** [...] We can't send them back, so we have to do what we have to do.

[22 - 23] **The Court:** [...] What says the defense?

[24 - 25] **Dr. Faltas:** [...] I am agreeable to a mistrial, and I thank Your Honor for doing that.
* * * * * [2 - 3] **(Whereupon, the jury returned to open court at 11:15 p.m.)**

[4 - 6] **The Court:** [...] 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.)**

[17 - 25] **Ms. Weiss:** [...] I would assume the bond goes back into effect since there's been no verdict? [...] 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.

Dr. Faltas' 26 February 2010 at 9:52 pm insight became this State's law in *State v. Rampey*,

(Opinion 28118, SCAS 5 October 2022): **a hung jury is a valid and socially useful result of crim-**

inal trial. This Court's *State v. Taylor*, 427 S.C. 208, 219, 829 S.E.2d 723 (2019), had 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 arguments but dismissed as improvidently granted ("DIGed"),¹⁶ 430 S.C. 366, 845 S.E.2d 210 (2020), only to re-examine the issue

¹⁶ Dr. Faltas had **previously** compiled for SC S Ct two *statistical* studies: one shows 12% of that court's

in *Rampey, supra*. By then, Charles Brandon Rampey, *the human being*, had served **most of his sentence from an unconstitutional conviction**, which would not have happened had SC S Ct, instead of DIG-ing *Taylor*, given in it the same answer it gave in *Rampey*, the case.¹⁷

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 Dr. Faltas' parents which must be paid by improving all people and things around her*. 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 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, novel and unprecedented as they may be, with open minds, assured by Dr. Faltas' *many* instances of successful *pro se* advocacy.

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 Vol VI pp 9-53) 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

total work wasted on "DIGs" and suggests mathematical markers to filter out before cert. grants cases likely to be DIGed; the other shows that State appeals of PCR grants by the circuit court or from this Court's reversals of PCR denials also waste appellate work and deny speedy retrial to criminal defendants who got "PCR-cleansed" of unconstitutional convictions and stood presumed innocent again.

¹⁷ Parenthetically, it must have been *always* known that retrials rarely follow mistrials (*e.g.*, all harassment charges against Dr. Faltas were **three years later** dismissed **with prejudice**). The coaxing "no 12 people who are smarter and more conscientious than you can be assembled" **derogates the ideal of jurors as random samples of their communities**. Deadlocked juries cannot *biostatistically* always happen to be the smartest and most conscientious 12 people in their respective county or federal district. 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 acquired a perspective **no jurist can acquire and continue to sit: that of the falsely-accused criminal defendant**. She offered SC S Ct the fruits of her scientific approach combined with her sad experience.

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.

The U.S. Constitution “split the atom of sovereignty” **only** “two ways”; per the Supremacy and “No-New-State” Clauses, **a state has no power to further “split the atom of sovereignty”** without splitting *itself* into smaller states *with Congress’ consent*. *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))).

State v. Long, 406 SC 511, 753 S.E.2d (2014), and *In Re Richland County Magistrate’s Court*, 389 S.C. 408 699 S.E.2d 161 (2010), emphasized that only a sovereign may prosecute crime. Thus, Dr. Faltas’ conviction of simple assault and 20-day sentence are void *ab initio* for having been entered by CMC which is not a court of a sovereign the U.S. Constitution accepts.

Second Issue: Preemption.

Enactment of § 16-3-600 (E)(3), SC Code of Laws, preempted *the* City’s ordinance 14-31.¹⁸ Laws exempting a conduct or class of people from prosecution or punishment are always retroactive as declarations of *substantive* rights. *Edwards v. Vannoy*, 593 U.S. _ slip at 19-20 (2021). Section 16-3-600 (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 ban on *ex post facto* laws. Rather, it codified SC’s legislature’s intent that *henceforth*

¹⁸ **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.**

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* 14-31) and common law did not give clear notice and/or resulted in denial of equal protection throughout the State. Dr. Faltas' 25 April 2013 conviction under the then-preempted City ordinance 14-31 is thus void.

Third Issue: Basic Human Right to Speak for Oneself.

That speaking for oneself is a *basic* human right is as "self-evident" as the right to Liberty is in the Declaration of Independence. Denial of a *basic* human right is *per se* cruel and unusual.

Under SC's Constitution, *only published decisions* of SC S Ct bind 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 the states by Constitution, Article IV, Section 4**, "judicial power" is limited to deciding cases or controversies between/among parties who voluntarily submit to, or are properly brought within, a court's jurisdiction. No SC law or usage ever allowed a court, **not sitting to decide a case or controversy**, to *prospectively* order blanket denial of a human being's right to speak for herself. Dr. Faltas' 25 April 2013 trial, conviction and sentence, occurred while she was supplanted by Esq. Lupton. SC Circuit Judge Brown reversibly erred and aggravated the harm by denying Dr. Faltas' request to brief the necessity of the SC Crim R 29(b) proceedings being heard at RCCCCP, which forced counsel Addison neglected. *Anders v. California*, 386 U.S. 738 (1967), and *State v. Williams*, 305 S.C. 116, 406 S.E.2d 357 (1991), allow **even murder convicts** to supplement counsel's brief.¹⁹

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

Any opinion/ruling expressly "disfavoring" reopening for evidence discovered after *Brady* violations is *ipso facto* controlled by an error of law and must be reversed *at the earliest* possible

¹⁹ The conscience of *every unbiased jurist* should be shocked by that right being *selectively* denied to Dr. Faltas for her having done no more than win *most of* her prior cases *pro se*.

proceeding. As *Brady* violations deny *federal* due process rights, this Court is bound by the holdings, ancestry and progeny, of *Smith v. Cain*, 565 US 73, (2012), *Wearry v. Cain*, 577 U.S. 385, 136 S.Ct. 1002 (2016), and *Kyles v. Whitley*, 514 U.S. 419, 434 (1995):

“To make that determination, this Court “evaluate[s]” the withheld evidence “in the context of the entire record.” *United States v. Agurs*, 427 US 97 (1976)”.

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

SC’s magistrate courts have no *duces tecum* or out-of-count *subpoena*/summons powers. Dentsville Magistrate Newsom’s (“DMN”) denials of Dr. Faltas’ **two** requests: (a) to return the case of Richland County Circuit Court (“RCCC”) of Common Pleas (“CP”), which has **both concurrent jurisdiction and broader subpoena power, and** (b) for DMN to issue *subpoenae* are *per se* denials of compulsory process. DMN’s *insistence* that witnesses who had evidence favorable to Dr. Faltas’ case would have shown-up without *subpoena* or summons is such *plain error* on the role and necessity of compulsory process that this Court should reverse on this issue even if Dr. Faltas’ forced counsel, Attorney Dan Addison (“Esq. Addison”) did not *initially orally* argue it to SC Circuit Judge Brown. On Dr. Faltas’ *pro se* Rule 59(e), SCRCF motion to reconsider, SC Circuit Judge Brown did acknowledge that compulsory process is available in SC Crim R 29(b) proceedings but claimed Dr. Faltas was not denied compulsory process.

The five years between Dr. Faltas’ making her SC Crim R 29(b) motion and that motion being heard, coming after the 44 months between the charge and the actual trial on it, and followed by three years between DMN’s denial of Dr. Faltas’ SC Crim R 29(b) motion and DMN’s **still-incomplete return on appeal to circuit court**, for a total of **thirteen years and six months** between Dinah Steele’s September 2009 charging Dr. Faltas with simple assault and SC Circuit Judge Brown’s February 2022 denial of Dr. Faltas’ appeal from DMN’s denial of Dr. Faltas’ SC Crim R 29(b) **are *per se* denials of Dr. Faltas’ Sixth Amendment right to speedy adjudication of criminal charges against her.** Proof is in 2019-02-04 Tr. pp 5-9, 59-65 and 127-8 (RoA Vol VII pp 18-62):

[Page 5:20-21] Defendant Faltas: And there are witnesses, necessary witnesses —

[22] THE COURT: For? For the transfer?

[23 to page 6:5] 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] [... Y]our 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 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. [...] No, we've got the whole thing. **We've got a motion to reopen. [...] 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: [...] **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 7:6] 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.**

[8-13] THE COURT: [...] 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. [...] So, all of this is related but— [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: 1] Defendant Faltas: [...] B]ut under protest [...] 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?** * * * * *

[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 9:2] 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: [...] *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: [...] *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 5: 21-22] 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 6: 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: 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.*

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

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

[22 to Page 65:9] Defendant Faltas: So, I (inaudible) if you are saying and I'm not sure you are saying it or not saying it that rule 29(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 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. [...] 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 127.22-23] 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. 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. I 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?*

DMN was controlled by many errors of law. **Dr. Faltas urges, NOT that the burden remains on the Prosecution after conviction, but** (1) In the criminal context, irrespective of the type of motion and of the burden of proof on the motion, *the right to full compulsory process remains inviolate*; (2) *prima facie Brady* violation showing **shifts the burden to the Prosecution** to show the withheld/lied-about material *would not have undermined confidence in the outcome.*

The Prosecution here doubtlessly committed **two separate Brady violations**: falsification of Crouch's criminal record and concealment/misrepresentation of Steele's "nervous breakdown" medical records. The solution to the latter was *duces tecum* compulsory process for those records and for that out-of-county "primary care provider." If SC magistrate courts do not have those powers, the solution is to transfer the case to the circuit court **which has broader subpoena powers and concurrent jurisdiction.** No *practical or theoretical* barriers stood against that solution which **Dr. Faltas timely sought few times from DMN and RCCCCP.** As CMC had finally admitted all its "judges" are recused from Dr. Faltas' cases, her SC Crim R 29(b) motion had not been remanded **to the real trial court.** Indeed, DMN knew less about *the facts* than RCCCCP which had heard Dr. Faltas' *first* appeal and which had the power to, *and did*, require more records from CMC. By contrast, DMN had no power *or interest* in obtaining CMC's complete records; and did not even return

his records to RCCCCP until two years after he had been *ordered* to do so; and then made a woefully incomplete return at that.

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

The right of criminal defendant to be protected from improper impeachment *if (s)he testifies in his/her own defense* **does not derogate** all criminal defendants' right to *fully* confront (and *fully* impeach) all witnesses against such defendants. **No prior conviction/act evidencing a witness' unreliability or other motive for him/her to testify falsely against a criminal defendant is *per se* excludable.** SC Circuit Judge Brown erred in affirming DMN's erroneous belief 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 proving unreliability and/or **motives to lie, specially if that evidence had been wrongly withheld by the Prosecution.** DMN further erred on the law of, and Judge Brown ignored, Steele's ability to trespass Crouch from Steele's property Crouch *even as White's invitee.* (2019-02-04 Tr. pp 89-90 = RoA Vol VII pp 18-62):

[PAGE 89:23] **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 90:1] **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:** [...] *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.

White, not Steele, **may have initially put Crouch on trespass notice.** But Crouch *perceived* that Steele could put Crouch on trespass notice *even if White wanted Crouch as his invitee.* 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 on **22 April 2012**, she banged on White's window/door. Thus, Steele would have had grounds to put Crouch on trespass notice. 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 no longer a tenant but had damaged a door/window. **With her criminal record, Crouch would have had no basis to challenge any trespass notice Steele could have issued at any time.**

Rule 608, SCRE, Evidence of Character, Conduct and Bias of Witness, provides *in toto*, with the comment on Section (c) clarifying:

- (a) **Opinion and Reputation Evidence of Character.** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.
- (b) **Specific Instances of Conduct.** Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified. [¶] The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.
- (c) **Evidence of Bias.** Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.

Except for the addition of subsection (c), this rule is identical to the federal rule. * * * * Subsection (c) was added to address impeachment by showing bias or impartiality. *State v. Brewington*, 267 S.C. 97, 226 S.E.2d 249 (1976); *North Greenville College v. Sherman Const. Co., Inc.*, 270 S.C. 553, 243 S.E.2d 441 (1978).

United States v. Abel, 469 U.S. 45, 52 (1984), stated:

Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony.

And *Turner v. U.S.*, 582 U.S. ___, 137 S. Ct. 1885 (2017), added:

We of course do not suggest that impeachment evidence is immaterial with respect to a witness who has already been impeached with other evidence. See *Weary v. Cain*, 577 U.S. [385], ___-___, 136 S.Ct. 1002, 1006-1007, (2016) (*per curiam*).

Even without express *quid pro quo*, a witness' *subjective* hope of some benefit in return for false testimony is *still* material; *e.g.*, *Bowman v. Sterling*, 45 F.4th 740, 756-7 (4th Cir. 2022):

Even without any evidence of an agreement between Johnson and the State regarding those charges, a jury could infer that Johnson was motivated to curry favor with the prosecution so that the charges against him would be dropped or otherwise beneficially resolved. Had the charges been disclosed, the prosecutor could not have claimed in closing argument that there was no evidence of *any* charges against Johnson, but only charges related to this crime.

United States v. Hill, 322 F.3d 301, 304 (4th Cir. 2003), had held:

[E]xclusion of the evidence [i]s unconstitutional [if] the defendant[s ...] evidence went directly to the issue of bias of the witness, or motive of the witness to fabricate.

Quinn v. Haynes, 234 F.3d 837, 845-7 (4th Cir. 2000), distinguished evidence involving, on the one hand, a witness's bias or motive and, on the other hand, the witness's general credibility:

The distinction between impeachment evidence proving bias and impeachment of general credibility is important because generally applicable evidentiary rules limit inquiry into specific instances of conduct through the use of extrinsic evidence and through cross-examination with respect to general credibility attacks, but no such limit applies to credibility attacks based upon motive or bias.

Defendant's right to discover witness's biases and motives is well-established law. *United States v. Masino*, 275 F.2d 129, 132 (2nd Cir. 1960); *United States v. Figueroa*, 548 F.3d 222, 229 (2nd Cir. 2008); and *Boggs v. Collins*, 226 F.3d 728, 737 (6th Cir. 2000); held, respectively:

Cross-examination is proper when its purpose is to reveal bias or interest on the part of the witness being examined.

The Supreme Court has held that impeachment for bias is admissible under Rule 402.

Cross-examination as to bias, motive or prejudice is constitutionally protected, but cross-examination as to general credibility is not.

This Prosecution *knew* of Crouch's extensive criminal record since "11/11/2009, 4:46:19 pm," p 11, *supra*, but *actively* concealed it and falsified it. **Consequently, in Dr. Faltas' 25 April 2013 trial, Crouch was not impeached *at all*.** So, this case is *a multo fortiori* from *Weary*, *supra et infra*.

Eighth Issue: The Cumulative-effect/New-light Standard.

Rules of court *procedure* prescribe *only* how an issue is brought before a court, not how a case must be decided *on its substance*. DMN and SC Circuit Judge Brown reversibly erred by ignoring *the cumulative effect* of after-discovered evidence and the new light it cast on the case. The *substantive* criteria, developed before the *procedural* rules, are constant in federal and state law, across eras and jurisdictions, whether *presented* under Rule 60(b), FRCP, Fed. Crim. Rule 33; other states' rules similar to the federal rules, or in South Carolina, under SC Crim R 29(b).

Finality is good; **but finalizing injustice is not**. That would turn 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 likelier 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. **In all cases, the criteria are applied to promote truth and finality. Legal truth is given in verdicts.** A "make a different verdict likely" criterion promotes truth. As legal truth is narrow in criminal cases, the question is: **would the newly-discovered evidence raise reasonable doubt of defendant's guilt?**

DMN admitted doubts of Dr. Faltas' guilt (2019-02-04 Tr. pp 135-6 = RoA Vol VII pp 18-62):

This is a little bit more complex in part because you are incredibly intelligent and have a penchant for details. [...] Shouldn't be ashamed for being intelligent or having a penchant for details. **I'm not sure and I'm not making a ruling about whether they should have convicted you. That's not for me to rule at this date.** [...] Now you testified under oath, I assume, at that trial you did not assault her, she testified under oath you did. The trier of fact made that decision. That's not for me. **I may have believed you had it been tried in front of me. I don't know.** But I don't have that luxury of saying, you know, she wouldn't have fought this hard for so long if she didn't have some—and there's part of me that gave you leeway today that I might not normally give because you've fought long and hard for this. **I do believe you believe in your heart and soul what you are saying.** However, I'm tied by what the law is.

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 ignored.

Nor does "not *merely* cumulative or impeaching" prong exclude Dr. Faltas' evidence. Impeaching evidence **was** withheld in violation of *Brady/Kyles/Gibson, supra*. "*Merely*" is key. Impeaching evidence mandates a new trial if 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. **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. 180 (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 her own apartment while she paid rent for it from December 2009 to April 2011.*²⁰ DMN's injection of his own views of the law into Crouch's head and DMN's 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 *a fortiori* from the error reversed in *Goss v. State*, 425 SC 101, 108, 820 SE 2d 373 (2018), which concluded:

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.

This succession of SC's, other states', and federal circuits', case law establishing that criminal defendants seeking new trial based on after-discovered evidence have heightened rights:

²⁰ 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.*

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 "*not 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 *Fabrilus 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: *Mulkins et al. v. Board of Supervisors Page Cty, 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. 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 verdict." (Emphasis in original).

1990-03-29: *State of Colorado v. 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.

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 from the oral argument before then-Judges Anderson, Huff and Beatty:

[minute 11:01] **The Honorable Judge Beatty:** [O]ne 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:** [...] 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; [...] the exchanges are on page 39 and 40 [...] from the trial record. And [...] 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. We'll give you time in reply. * * * * *

[minute 14:04] **Counsel for the City:** [...] 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 had 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; SC S Ct denied *the City's certiorari* petition. 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 Montana, and Maine to Colorado, 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 vacuum. After-discovered evidence gains weight from 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. And neither Teresa Knox nor Jessica Mangum (now CMC Chief Judge) had brought records to the 4 February 2019 hearing.

Ninth Issue: An unconstitutionally-convicted defendant is entitled to speedy relief.

Constitutionally-flawed convictions should not be affirmed on direct appeal in the hope that later collateral proceedings might provide relief. *Wearry v. Cain*, 577 U.S. 385, 106 S.Ct. 1002, 1008 (2016) concluded, *inter alia*: "The alternative to granting review, after all, is forcing Wearry to endure yet more time on Louisiana's death row in service of a conviction that is constitutionally flawed." Dr. Faltas would be victimized twice if relegated to PCR, the availability of which DMN used as a pretext to not hold *the City* accountable for non-production. Ineffectiveness of trial counsel is an evil; but prosecutorial misconduct is a greater evil; and an unconstitutionally-convicted defendant is a victim of both. Courts should not take their time to improve the bar, be it prosecution or defense, on the backs of wrongly-convicted defendants.

Tenth Issue: Federal recusal standards control 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. 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 Ct. Thus, Dr. Faltas was denied due process at all levels by refusals of recusal. The recent and now-controlling standard is *Caperton v. A.T. Massey Coal Co., Inc. et al.*, 556 U.S. 868 (2009) **[with various types of emphasis added]**:

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.

Those with deepest *subconscious* biases protest most vociferously a lack of bias. But proceedings in a summary court (if it is *arguendo* a court at all) must be fair and seen to be fair.

A unanimous court held in Mayer v. Chicago, 404 US 189, 197-8 (1971):

We add that even approaching the problem in the terms the city suggests hardly yields the answer the city tenders. The practical effects of conviction of even petty offenses of the kind involved here are not to be minimized. A fine may bear as heavily on an indigent accused as forced confinement. The collateral consequences of conviction may be even more serious, as when (as was apparently a possibility in this case) the impecunious medical student finds himself barred from the practice of medicine because of a conviction he is unable to appeal for lack of funds. Moreover, the State's long-term interest would not appear to lie in making access to appellate processes from even its most inferior courts depend upon the defendant's ability to pay. It has been aptly said:

"[F]ew citizens ever have contact with the higher courts. In the main, it is the police and the lower court Bench and Bar that convey the essence of our democracy to the people.

"Justice, if it can be measured, must be measured by the experience the average citizen has with the police and the lower courts."^[7]

Arbitrary denial of appellate review of proceedings of the State's lowest trial courts may save the State some dollars and cents, but only at the substantial risk of generating frustration and hostility toward its courts among the most numerous consumers of justice.

CONCLUSION

Every court must ask itself the **Luke 16:10-12** question: "**He that is faithful in that which is least is faithful also in much: and he that is unjust in the least is unjust also in much.** If therefore ye have not been faithful in the unrighteous mammon, who will commit to your trust the true riches?"

A 20-day sentence might *seem* tolerable; but they are 20 days in ASGDC, where **two** young, previously healthy, male inmates **already died in 2022 alone (and three more in 2023).**

They are 20 days **on top of fourteen years of other, now-proven false arrests and incarcerations of the now-almost-seventy Dr. Faltas.** And they are 20 days in ASGDC, where Dr. Faltas served ten days *this* June-July for asserting her *basic* human right to speak for herself and came out with the serious and possibly fatal atrial fibrillation ("A-fib") which struck her there and *could have* self-limited had prompt medical attention been given to her. Instead, she was ignored for hours while she stood holding the medical request form to her cell window.

Marie Assa'ad-Faltas, MD, MPH's 25 April 2013 conviction and sentence in CMC should be vacated. CMC should be ordered to cease operations forthwith with trials of petty state crimes to be transferred for trial by a court fully owned and operated by the State sovereign alone.

Sincerely submitted on 6 November 2023.



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

On 6 November 2023, I served Ms. Jocelyn Baker, sole Counsel for sole Respondent in this case, with a true copy of this document by personally going to 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 Ms. Baker, all God so willing.



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