FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4003525

RECEIVED
OCT 31 2014
SC Court of Appeals

City of Columbia

PLAINTIFF(S)

Marie Therese Assa'ad Faltas

DEFENDANT(S)

Submitted by: ______	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other ______

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other ______

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other ______

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

2014 AUG 19 AM 11:22 [stamp, partially illegible]

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : ______

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge ______ **Judge Code** ______ **Date** ______

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of ______, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 19 day of Aug, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

David A Fernandez

Tristan Michael Shaffer

Marie Therese Assa'ad Faltas

Marie Therese Assa'ad Faltas

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter ______

Clerk of Court Jeanette W McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
City of Columbia,	)	DOCKET NO.: 2013-CP-40-3525
Respondent,	)	
v.	)	ORDER
Marie Therese Assa'ad-Faltas,	)	
Appellant.	)	

2014 AUG 19 AM 11:22
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED
RECEIVED
OCT 31 2014
SC Court of Appeals

This appeal came before the Court on December 13, 2013 on appeal from the City of Columbia Municipal Court. The City of Columbia ("City") was represented by David A. Fernandez, Esquire. Marie Therese Assa'ad-Faltas ("Appellant") appeared with her attorney, Tristan Schaffer, Esquire. Prior to the hearing, Appellant personally submitted motions seeking to relieve Mr. Shaffer and proceed *pro se*. Mr. Shaffer also submitted a motion on Appellant's behalf to be relieved. At the hearing, this motion was granted because the nature of the appeal was criminal, and Appellant was allowed to represent herself. *See* South Carolina Supreme Court Order, November 6, 2013.[1]

BACKGROUND

This matter arises from a City ordinance citation issued to Appellant on October 20, 2011 following an observation on October 7, 2011 of violations of Section 8-41 and 8-32 of the Code of Ordinances for the City of Columbia and Section 307.1 of the International Property Maintenance Code (as adopted by Section 5-151 of the Code of Ordinances). Section 8-41 regulates placement of certain items outdoors. Section 8-32 regulates the sanitary conditions of premises. Section 307.1 regulates accumulation of rubbish or garbage. Per the citation, Appellant had ten days to remove unauthorized items found on her property. The Appellant was then charged with unlawful acts, first offense and found guilty on April 11, 2013 following a jury trial in Columbia Municipal Court where she was represented by Orin Briggs, Esquire. She was sentenced on April 25, 2013 to thirty days imprisonment. On June 17, 2013, Appellant filed a

[1] The South Carolina Supreme Court subsequently issued an Order on January 30, 2014 saying even in criminal matters, Appellant may not represent herself on appeal. *See* South Carolina Supreme Court Order, January 30, 2014.

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Notice of Intent to Appeal. A transcript of the proceeding was filed by the municipal court. Subsequent to the hearing, this Court ordered the municipal court to provide transcripts of all pre-trial and sentencing proceedings and the exhibits from the trial. This information was received by the Court.[2]

STANDARD OF REVIEW

"In criminal appeals from magistrate or municipal court, the circuit court does not conduct a de novo review, but instead reviews for preserved error raised to it by appropriate exception." *Rogers v. State*, 358 S.C. 266, 269, 594 S.E.2d 278, 279 (Ct. App. 2004), *citing City of Landrum v. Sarratt*, 352 S.C. 139, 141, 572 S.E.2d 476, 477 (Ct. App. 2002). Further, "the circuit court, sitting in its appellate capacity, may not engage in fact finding." *Id.*, 358 S.C. at 270. On appeal from municipal court "[t]he appeal must be heard by the Court of Common Pleas upon grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court... [a]nd the court may either confirm the sentence appealed from, reverse or modify it, or grant a new trial." S.C. Code Ann. § 18-3-70.

GROUNDS FOR APPEAL

Appellant's Notice of Intent to Appeal lists the grounds for appeal as violations of the due process clause of the State and Federal Constitutions, the absence of specific authority to adopt the ordinances, and the law against greater local penalties as established in *Beachfront Entertainment, Inc. v. Town of Sullivan's Island*, 379 S.C. 602, 666 S.E.2d 912 (2008). At the hearing on the appeal, Appellant argued nine main reasons as the basis for her appeal: 1) City's definition of "rubbish" is preempted; 2) City does not have authority to regulate things affecting health and safety based upon sovereignty principles; 3) Appellant was selectively prosecuted; 4) City gathered information from an illegal entry without a search warrant, which should be suppressed; 5) the ordinances are void for vagueness; 6) the jury pool was tainted; 7) Appellant did not have a jury of her peers because immigrants do not have the right to sit on juries;

[2] Appellant contends the Court did not receive all of the transcripts and exhibits. After a thorough review of all information received, this Court is unable to identify any transcripts that were not received. Appellant was correct that the Court did not receive all of the exhibits, so the Court requested the exhibits again. The Court has now received all of the exhibits it believes are necessary in order to rule on this appeal.

8) Appellant was prejudiced because she did not have the last word; and 9) Appellant was not qualified as an expert witness.[3]

DISCUSSION

1. Whether the City's definition of "rubbish" is preempted by State law.

Appellant first contends that the South Carolina Department of Health and Environmental Control ("DHEC") defines rubbish differently than the City ordinances; therefore, the State definition preempts the City definition. "It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." *B & A Dev., Inc. v. Georgetown Cnty.*, 372 S.C. 261, 271, 641 S.E.2d 888, 894 (2007). To preserve an issue at trial for appellate review, the issue must have been "(1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007).

At the trial, there was a dispute regarding the definitions of "rubbish" and "trash" between Appellant and the City as part of the arguments made. Transcript of Record at 119-20, 173-74, 204-05 (April 11, 2013). The trial judge specifically went over the definitions he was going to charge the jury, including the definition of rubbish. *Id.* 243-44. Appellant never raised the DHEC definition of rubbish. The only mention of preemption during any proceedings was when Appellant briefly stated the issue without any specificity of "whether the state law preempted the field or not" in her motion for a new trial. Transcript of Record at 108 (April 25, 2013). This argument was not made specifically for the definition of "rubbish," and it seems it was made in relation to whether state law preempts the City's ability to criminalize conduct. *See id.* Appellant did not raise the issue of preemption of the definition prior to or during the trial, and there was no specific objection regarding preemption contemporaneous to any discussions at trial. Therefore, this argument was not sufficiently preserved for appeal.

2. Whether the City has authority to regulate, prosecute, or try cases based upon sovereignty principles.

Appellant makes several arguments related to whether City ordinances are invalid and whether the City is allowed to regulate and prosecute cases based upon the principle of

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[3] In a brief submitted to the South Carolina Supreme Court and copied into this Court's file, Appellant argued additional grounds for relief from the verdict. These grounds were not raised in Appellant's Notice of Appeal or at the hearing on her appeal; therefore, this Court will not consider them.

sovereignty. Appellant argues that the City is not a sovereign under the United States Constitution because the Constitution only recognizes state and federal sovereigns, and therefore, the City has no right to legislate or operate its own courts. She states that the municipal court system violates Article IV, Section 3, Clause 1 of the United States Constitution, which provides that no new State shall be formed without consent of the legislatures of the states as well as Congress. Consequently, South Carolina's Home Rule Act, providing the structure and organization of county government, is invalid. Therefore, because the City is essentially acting as a "State" without consent, any ordinances adopted by the City are invalid. Appellant in essence argues she "was tried in a non-sovereign municipality's court, before a non-sovereign judge, for alleged violation of an ordinance enacted by a non-sovereign."

The United States Supreme Court has repeatedly held that municipalities are subdivisions of the states, not independent sovereigns. *See, e.g. City of Trenton v. New Jersey*, 262 U.S. 182, 187 (1923) ("A municipality is merely a department of the state, and the state may withhold, grant or withdraw powers and privileges as it sees fit. However great or small its sphere of action, it remains the creature of the state exercising and holding powers and privileges subject to the sovereign will."). Appellant relies upon *Jinks v. Richland County, S.C.*, 538 U.S. 456 (2003) to support her argument that a municipality is not a sovereign. The Supreme Court does state that Richland County is "not a State, but a political subdivision of a State," and the Court uses this argument as a reason for not granting Richland County sovereign immunity. *Jinks v. Richland County, S.C.*, 538 U.S. 456, 466 (2003). This Court agrees that the City of Columbia is not a recognized sovereign. However, the City is not acting as a sovereign; rather, it is acting pursuant to powers granted to it by the State pursuant to the Home Rule Act, S.C. Code Ann. § 5-7-10 *et seq*. Based on United States Supreme Court precedent, the State granted powers and privileges to the municipalities, including the power to enact ordinances, and the State created the municipalities as an extension of the State, which is not a violation of the state or federal Constitution. *See, e.g. City of Trenton v. New Jersey, supra*.

Appellant also argues that City ordinances and the municipal court system are unconstitutional. "A municipal ordinance is a legislative enactment and is presumed to be constitutional." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 425, 593 S.E.2d 462, 467 (2004). Under the South Carolina Constitution, "all laws concerning local government shall be

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liberally construed in their favor." S.C. Const. art. VIII, § 17. South Carolina law provides that each municipality of this State may enact:

> [R]egulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it.

S.C. Code Ann. § 5-7-30. The legislature has specifically granted municipalities the right "to provide by ordinance that the owner of any lot or property in the municipality shall keep such lot or property clean and free of rubbish, debris and other unhealthy and unsightly material or conditions which constitute a public nuisance." S.C. Code Ann. § 5-7-80. Additionally, "Municipalities and counties may adopt by reference only the latest editions of the following nationally recognized codes and the standards referenced in those codes for regulation of construction within their respective jurisdictions: property maintenance...." S.C. Code Ann. § 6-9-60. Therefore, the legislature has granted to the City rights to enact ordinances.

The legislature also enacted the municipal court system in S.C. Code Ann. § 14-25-5, and the South Carolina Supreme Court has held that it is constitutional:

> Section 14-25-5, the statute authorizing creation of Municipal Courts, provides in unambiguous language that these Courts are included within the unified judicial system. Subsection (a) permits every municipality to "establish a municipal court, which shall be part of the unified judicial system of this State, for the trial and determination of all cases within its jurisdiction." In light of this clear statement of legislative intent, we hold that Municipal Courts comply with the constitutional mandate that they be part of a unified judicial system.

City of Pickens v. Schmitz, 297 S.C. 253, 255, 376 S.E.2d 271, 272 (1989) (quoting S.C. Code Ann. § 14-25-5). Relatedly, Appellant argues that the municipal court system violates the separation of powers because the executive branch is the same as the judicial branch. Specifically, she claims that municipal court judge Dana Turner also serves as a clerk for the court and therefore has an executive position. This issue was not raised specifically at trial or any trial proceeding and is not preserved for review.

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3. **Whether the ordinances relate to a matter of health and safety.**

Appellant next argues that even if the City may pass regulations, it may only do so on matters relating to health and safety, and the ordinances at issue in the present case do not relate to health and safety, as the matters the ordinances address would have to be deferred to DHEC. Appellant claims this issue is a matter of due process based on the premise that a statute infringing on a fundamental right must be narrowly tailored to serve a compelling state interest.

As previously stated, S.C. Code Ann. § 5-7-30 provides that each municipality of this State may enact ordinances related to "law enforcement, health, and order in the municipality" or any subject which appears "necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it." This statute has been interpreted to give municipalities a "broad grant of power." *Hospitality Ass'n of S.C., Inc. v. Cnty. of Charleston*, 320 S.C. 219, 227, 464 S.E.2d 113, 118 (1995). "A municipal ordinance is a legislative enactment and is presumed to be constitutional." *Bibco Corp. v. City of Sumter*, 332 S.C. 45, 504 S.E.2d 112 (1998).

Ordinance 8-32 reads:

> Premises to be kept in sanitary condition.
> All premises shall be kept at all times in a sanitary condition and all garbage, leaves, trash, damp or low places, cans, vessels, broken bottles, or pieces of china or glass that may hold water shall be deemed unsanitary. The occupant of any premises and the owner of any vacant premises within the city who shall permit or tolerate the existence of any of the conditions condemned in this section shall be guilty of a misdemeanor, punishable, upon conviction, in accordance with section 1-5.

Ordinance 8-41 reads in part:

> Outdoor placement of certain items prohibited.
> (a) It shall be unlawful for the occupant or owner of any property within the city to allow any of the following items to remain on the property outside a dwelling or other enclosed structure for longer than 48 hours, in any location visible from streets or sidewalks adjacent to the property: Appliances, bedding, bottles, glass, cans, cardboard, upholstered furniture manufactured for indoor use only, household appliances, jars, lumber and building supply materials not related to an active permit and not neatly stacked, machine parts, motor vehicles parts, pallets, paper, plumbing fixtures, rags, scrap metal.
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First, this Court does not believe that the ordinances infringe upon a fundamental right, meaning a right that is deeply rooted in "the Nation's history and tradition;" therefore, it is not required that the ordinances meet the high level of scrutiny Appellant demands. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). Second, a plain reading of these ordinances reveals they are related to public health and safety. Testimony was presented at trial that the primary purpose of the ordinances is to ensure sanitary conditions, specifically, to prevent the accumulation of stagnant water to prevent mosquitos. Transcript of Record at 71 (April 11, 2013). There was argument at trial regarding whether any of Appellant's buckets had water in them or were unsanitary. *See, e.g., id.* at 98, 145, 179-80, 209-12. Appellant also argued during post-trial motions that mosquitos are not necessarily a health detriment at all. *See* Transcript of Record at 109 (April 25, 2013). Regardless of whether the buckets actually had water in them or whether mosquitos are a health detriment, the testimony presented supports that the ordinances were enacted for the purpose of promoting health and safety. There is no evidence in the record that the ordinances were enacted to serve a purpose other than to promote health and safety. Therefore, this Court finds that the evidence in the record supports the conclusion that the ordinances sufficiently relate to health and safety and are constitutional.

4. Whether the ordinances are unconstitutional based upon *Beachfront Entertainment, Inc. v. Town of Sullivan's Island.*

Appellant asserts that the City may not criminalize any conduct that is not criminal throughout South Carolina based upon *Beachfront Entertainment, Inc. v. Town of Sullivan's Island*, 379 S.C. 602, 666 S.E.2d 912 (2008). *Beachfront Entertainment* arose when an owner of a restaurant and the restaurant's employees brought suit claiming that a town ordinance banning smoking in the workplace was invalid. *Beachfront Entertainment*, 379 S.C. at 604, 666 S.E.2d at 913. The ordinance imposed a fine of $500 and/or thirty days in jail. *Id.* The appellants contended the ordinance was invalid because it criminalized conduct that was not illegal under State law. *Id.* The South Carolina Supreme Court held that the state constitution "requires uniformity regarding the criminal law of this State and local governments may not criminalize conduct that is legal under a statewide criminal law." *Id.* at 606, 666 S.E.2d at 914. The Court held the ordinance to be invalid because it imposed a criminal penalty for smoking in places where smoking was not illegal under State law. *Id.* Additionally, the fine imposed by the

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ordinance was substantially greater than the fine imposed under the State's Clean Indoor Air Act. *Id.* at 607, 666 S.E.2d at 914.

Appellant argues that the ordinances she was charged with violating likewise criminalize otherwise legal activity. However, the Legislature has expressly provided that municipalities may "provide by ordinance that the owner of any lot or property in the municipality shall keep such lot or property clean and free of rubbish, debris and other unhealthy and unsightly material or conditions which constitute a public nuisance." S.C. Code Ann. § 5-7-80. Therefore, such laws cannot be outside the requirements of State laws, as they are expressly allowed. As explained, the City may regulate matters on its own affecting health or safety.

Appellant also states that the ordinances are unconstitutional pursuant to *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). *Lucas* addresses the law regarding takings in violation of the Fifth Amendment. There was never any claim or argument at trial that the City's actions constituted a taking of Appellant's land. Appellant's basis for citing this case is unclear, but if she contends that there was a taking of her land, Appellant failed to preserve this issue for review.

5. Whether evidence against Appellant should have been suppressed pursuant to *Florida v. Jardines.*

Appellant alleges that evidence used against her should have been suppressed pursuant to *Florida v. Jardines*, 133 S. Ct. 1409 (2013), as it was obtained through an unconstitutional search. *Florida v. Jardines* arose when police officers used a drug-sniffing dog on the porch of the defendant's home to search for narcotics without a search warrant. *Id.* at 1413. The United States Supreme Court held that the porch was considered part of the home's curtilage, and a search of a home's curtilage implicates the Fourth Amendment. *Id.* at 1414-15. Appellant also cites *Oliver v. United States*, 466 U.S. 170 (1984), which describes the open field doctrine, a doctrine that "allows police officers to enter and search a field without a warrant." *Oliver*, 466 U.S. at 173.

Appellant raised the case in pretrial motions to support a motion to suppress based on the assertion that City personnel improperly entered her land to gather evidence. *See* Transcript of Record at 17-18, 28 (April 11, 2013). The Court denied the motion to suppress and did not give a basis for the denial. *See id.* at 112. The only testimony an agent provided at trial regarding entering the land was a statement that one time he met Appellant at the edge of the land to deliver the Summons. *See id.* 101, 104-05, 111-12 (April 11, 2013). The only testimony to the

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contrary was that of the Appellant, who claims that agents came onto the land without her invitation and took pictures at close range despite no trespass signs. She bases this belief on the fact that the City has pictures of her land. *See id.* at 142; *see also* Transcript of Record at 110-11 (April 25, 2013) (reasserting this belief). Based upon the record, whether the agents were on her property when the photographs were taken was a question of fact determined by the trial court. The evidence does not support a finding that there was a violation of the Fourth Amendment. Additionally, *Florida v. Jardines* states that "law enforcement officers need not 'shield their eyes' when passing by the home 'on public thoroughfares,'" which appears to be an accurate description of the facts at play in this case. *Florida v. Jardines*, 133 S. Ct. 1409, 1415 (2013). The principles established in *Oliver v. United States* also would not support concluding there was a violation of the Fourth Amendment. Appellant's property was an undeveloped lot, which could be considered an open field. The *Oliver* Court held that even if a person erects fences or uses "No Trespassing" signs, there is no reasonable expectation of privacy in open fields. *Oliver v. United States*, 466 U.S. 170, 182-83 (1984). Therefore, *Oliver* does not support Appellant's argument that the evidence should have been suppressed. The trial court did not err in refusing to suppress the evidence.

6. Whether the ordinances are void for vagueness.

Appellant argues that the ordinances she allegedly violated are void for vagueness because they do not sufficiently define what material is prohibited to put a person on notice of a violation. "The void-for-vagueness doctrine rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication." *State v. Houey*, 375 S.C. 106, 113, 651 S.E.2d 314, 318 (2007). "The constitutional standard for vagueness is whether the law gives fair notice to those persons to whom the law applies. A statute is not unconstitutionally vague if a person of ordinary intelligence seeking to obey the law will know, and is sufficiently warned of, the conduct the statute makes criminal." *State v. Curtis*, 356 S.C. 622, 629, 591 S.E.2d 600, 603 (2004). Rather, a law is unconstitutionally vague "if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application." *Curtis v. State*, 345 S.C. 557, 572, 549 S.E.2d 591, 598 (2001).

The ordinances at issue read in part:

Sec. 8-32. Premises to be kept in sanitary condition.

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> All premises shall be kept at all times in a sanitary condition and all garbage, leaves, trash, damp or low places, cans, vessels, broken bottles, or pieces of china or glass that may hold water shall be deemed unsanitary. The occupant of any premises and the owner of any vacant premises within the city who shall permit or tolerate the existence of any of the conditions condemned in this section shall be guilty of a misdemeanor, punishable, upon conviction, in accordance with section 1-5.
>
> Sec. 8-41. Outdoor placement of certain items prohibited.
> (a) It shall be unlawful for the occupant or owner of any property within the city to allow any of the following items to remain on the property outside a dwelling or other enclosed structure for longer than 48 hours, in any location visible from streets or sidewalks adjacent to the property: Appliances, bedding, bottles, glass, cans, cardboard, upholstered furniture manufactured for indoor use only, household appliances, jars, lumber and building supply materials not related to an active permit and not neatly stacked, machine parts, motor vehicles parts, pallets, paper, plumbing fixtures, rags, scrap metal.
> ...
>
> Sec. 307.1 Accumulation of rubbish or garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

Appellant's counsel argued at trial that the ordinances were too vague to put a defendant on notice of what behavior would be an offense and that neither the notice nor Summons gave definitions of the terms. *See* Transcript of Record at 108-109 (April 11, 2013). Appellant asked questions at trial to the City's agents regarding whether the ordinance sufficiently defines the term "rubbish." *See, e.g., id.* at 106. The City argues that the ordinances specifically stated what materials are prohibited and Section 307.1 of the International Property Maintenance Code has a definitions section that describes what constitutes rubbish. The trial judge denied the motion that the statutes were unconstitutionally vague without stating a basis. *See id.* at 111.

Upon a review of the ordinances, this Court does not find that they are unconstitutionally vague as to not put a person of ordinary intelligence on notice of the illegal conduct. The ordinances employ common words easily identifiable in a dictionary. This Court holds the ordinances are not void for vagueness.

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7. Whether Appellant was selectively prosecuted.

Appellant alleges she was selectively prosecuted on the charges in this case and that she should have been allowed to present evidence of selective prosecution to the jury. To establish selective prosecution, a defendant must satisfy a two-prong test. *State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 200, 525 S.E.2d 872, 885 (2000). First, a defendant must show "he has been singled out for prosecution while others similarly situated have not been prosecuted for conduct similar to that for which he was prosecuted." *Id.* (quoting *United States v. Catlett*, 584 F.2d 864 (8th Cir. 1978) (internal quotations omitted)). Second, "the defendant must demonstrate that the government's discriminatory selection of him for prosecution was based upon an impermissible ground, such as race, religion or his exercise of his first amendment right to free speech." *Id.* (quoting *Catlett*, 584 F.2d at 865 (internal quotations omitted)).

Appellant states that examples of others not being prosecuted for conduct similar to that for which she was prosecuted include the properties next to her property, which also were in violation of the ordinances, including neighbor Dinah Steel, who had pot holes with stagnant water in them. Additionally, she claims the "meter maid" statute on Washington Street could be considered scrap metal. *See* Transcript of Record at 76-88 (April 11, 2013); *see also* Transcript of Record at 112 (April 25, 2013) (reasserting these arguments). The State contends that it initiated investigation based upon citizen complaints and not on its own accord for the purpose of targeting Appellant. The trial judge held that allegations of selective prosecution could not be presented to the jury pursuant to case law. *See* Transcript of Record at 88 (April 11, 2013).

Regardless of whether others were similarly situated, Appellant has presented no evidence that her prosecution was based upon an impermissible ground, such as race, religion, or her exercise of first amendment right to free speech. She has not alleged nor does the record contain any evidence to show that the State chose to prosecute her based solely on impermissible grounds. Therefore, it was proper for the trial court to hold that Appellant's allegations of selective prosecution were without merit.

8. Whether the jury pool was tainted or had been tampered.

Appellant contends the jury pool was tainted for four reasons. First, at jury qualifications, the presiding judge said in the presence of the jurors that Appellant could not have a copy of the jury list because she would not return it, which Appellant claims to be a prejudicial comment. Second, Appellant states that the judge who presided over jury qualifications was

recused from her cases and therefore could not preside over voir dire and jury qualification. Third, Appellant states that a person spoke to and influenced the jurors outside of the courtroom. Last, Appellant claims there were not forty jurors present for jury venire as required by S.C. Code Ann. § 14-25-165(b)(2).

Appellant first raises the issue of the jury being tainted at the pretrial hearing the day before the trial. *See* Transcript of Record at 22 (April 10, 2013). Appellant's allegations are that during the jury qualifications, after a jury was empaneled for a different case, the judge presiding over jury qualifications, who was not the trial judge, stated in the presence of the panel the Appellant personally could not have a jury list because she had previously not returned one. *See id.* at 23-24. Appellant was represented by an attorney and her attorney was given a copy of the jury list, just not the Appellant herself. *See id.* at 33. The trial judge listened to a recording of the jury qualification proceedings and made a finding that the trial should proceed unless additional evidence of tainting could be provided. *See id.* He did not state a basis for this ruling. *See id.* At trial, Appellant again raised the issue before jury selection. *See* Transcript of Record at 11-14 (April 11, 2013). The trial judge ruled that there was not sufficient evidence to dismiss the entire jury panel and gave Appellant the opportunity to submit a curative jury instruction, which Appellant did. *See* Transcript of Record at 15-16, 27 (April 11, 2013). The trial judge instructed the jury before the trial began that they were to disregard any comments they might have overheard during jury qualifications. *See id.* at 54. Furthermore, at sentencing, the issue was raised again as part of a motion for a new trial. *See* Transcript of Record at 105 (April 25, 2013). The trial judge took testimony regarding the situation from Officer Hampe, who Appellant alleges told the judge presiding over jury qualifications not to give her the jury list. *See id.* at 113-14. Hampe testified that he did inform the presiding judge that previously Appellant kept a jury panel list and said he believed she was held in contempt of court for doing so. *Id.* He testified that nobody instructed him to give the judge that message. *Id.* The trial judge then denied the motion for a new trial. *See id.* at 114.

Facts similar to the present case arose in the case *State v. Dunlap*, 346 S.C. 312, 550 S.E.2d 889 (Ct. App. 2001). In *Dunlap*, the qualifying judge made a comment to the jury panel that some defendants will "fess up" and plead guilty when they see the empaneled jury. *Dunlap*, 346 S.C. at 316, 550 S.E.2d at 891. Dunlap alleged the comment was prejudicial because it could be interpreted by a juror to mean that Dunlap was guilty. *Id.* The Court of Appeals found

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that this statement did not prejudice the jury panel because the trial judge questioned the jurors about their fairness, impartiality, beliefs, and whether they had already formed an opinion as to guilt or innocence, and no juror responded affirmatively. *Id.* at 318-19, 550 S.E.2d at 893. In the present case, the trial judge also questioned the jurors about prejudices, and no juror responded affirmatively. *See* Transcript of Record at 33 (April 11, 2013). The trial judge also ensured the jurors would be impartial by issuing the curative instruction. Based upon the record and case law, there is not sufficient evidence to find that the jury was tainted, and the trial judge made no error of law in analyzing the evidence presented.

Appellant also claims someone influenced the jurors outside of the court room before the trial began. *See* Transcript of Record at 24-27 (April 11, 2013). While outside the courtroom, Appellant stated she saw Dinah Steele, who was not a witness in the case, with the jury pool. *See id.* at 24. The trial judge instructed an officer to keep anyone from interacting with the jury pool. *Id.* The trial judge stated he had no evidence that she spoke to the jurors and did not find any evidence of jury tampering. *See* Transcript of Record at 25-27 (April 11, 2013). There is no evidence in the record that any tampering with the jury occurred; therefore, this Court finds no error in the trial judge's ruling.

Appellant states that the judge who presided over voir dire and jury qualifications, but not the trial, was recused from her cases, and therefore should not have been the presiding judge pursuant to *Gomez v. United States*, 490 U.S. 858 (1989). *Gomez* is distinguishable from the present appeal because it pertained to the duties of federal magistrate judges in criminal trials pursuant to the Federal Magistrate Act. *See Gomez v. United States*, 490 U.S. 858 (1989). It does not provide any guidance regarding state magistrate judges in South Carolina. Upon a review of the record, the only evidence Appellant presented of prejudice or partiality during jury qualifications is the comments made regarding the jury list, which has already been discussed. *See* Transcript of Record at 105-06 (April 25, 2013). There is no evidence to support Appellant's claim of prejudice or partiality by the presiding judge.

Last, Appellant argued during her post-trial motions that there were not forty people for jury venire as required by S.C. Code Ann. § 14-25-165(b)(2). *See* Transcript of Record at 110 (April 25, 2013). The only information in the record regarding the number of people present for jury selection is when the trial judge provided an update that there were twenty-four jurors present shortly before selection. *See* Transcript of Record at 19 (April 11, 2013). There is no

indication in the record of a final number or jurors. Additionally, the issue was not timely raised before the jury was selected. The record provides that Appellant mentioned to her attorney that "the statute requires forty jurors" in a conversation between the two of them at the defense counsel table. *Id.* at 22. However, an objection was not presented to the court to be properly preserved for appeal. *S.C. Dept. of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007). The appeal is denied because there is no evidence the jury was tainted, tampered with, or otherwise inappropriately assembled.

9. Whether Appellant should have been qualified as an expert witness.

Appellant contends it was error that the trial judge did not qualify her as an expert in the field of sanitation. Before a witness is qualified as an expert, the trial court must find (1) the expert's testimony will assist the trier of fact, (2) the expert possesses the requisite knowledge, skill, experience, training, or education, and (3) and the expert's testimony is reliable. *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009). "The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's discretion." *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997).

Appellant sought to be qualified as an expert in the field of "public health and sanitation." *See* Transcript of Record at 134 (April 11, 2013). It is undisputed that Appellant is a medical doctor with a Master's degree in Public Health who has been qualified as an expert in other trials. *See id.* at 133-34. The trial court listened to the voir dire regarding Appellant's qualifications and held that she was not an expert in the area of sanitation. *See id.* at 134. Upon a review of the record, this Court agrees that there was no evidence that Appellant was qualified as an expert in sanitation. Additionally, there is no evidence Appellant was prejudiced by not being able to be qualified as an expert. Appellant did not make a proffer of her proposed testimony regarding sanitation, and the record does not establish that Appellant's testimony would have been relevant for the jury. The trial court committed no error of law, and there is no basis to set aside the court's ruling that Appellant was not qualified as an expert witness.

10. Whether Appellant did not have a jury of her peers because immigrants cannot sit on juries.

Appellant argued at the hearing that she did not have a jury of her peers because immigrants are not allowed to sit on juries. "It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." *B & A Dev., Inc. v. Georgetown Cnty.*, 372 S.C. 261, 271, 641

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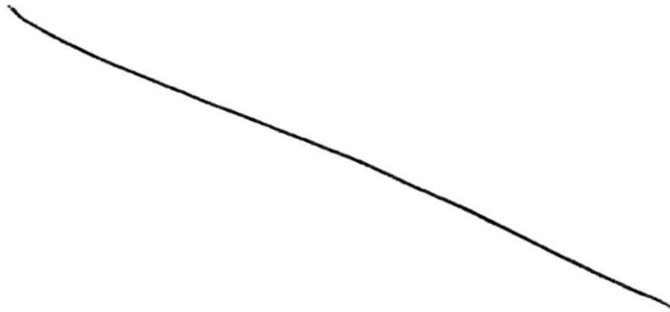
S.E.2d 888, 894 (2007). "To preserve an issue at trial for appellate review, the issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *S.C. Dept. of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007). This point was never raised pretrial, at trial, or sentencing. Therefore, this argument was not preserved for review.

11. Appellant was prejudiced because she did not have the final argument to the jury.

Appellant argued at the hearing that she was prejudiced because she did not have the "last word" at the trial before the jurors were dismissed for deliberations. "It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." *B & A Dev., Inc. v. Georgetown Cnty., supra*. "To preserve an issue at trial for appellate review, the issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *S.C. Dept. of Transp. v. First Carolina supra*. This point was never raised at pretrial, trial, or sentencing. Therefore, this argument was not preserved for review.

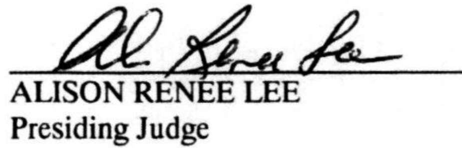
Regardless, a defendant in a criminal case is only entitled to make the final closing argument to the jury when he has offered no evidence. *See State v. Pinkard*, 365 S.C. 541, 543, 617 S.E.2d 397, 398 (Ct. App. 2005). If the defense presents any evidence, for example, testimony or exhibits, then the State retains the opportunity to make the final statements to the jury. *See State v. Gellis*, 158 S.C. 471, 155 S.E. 849, 855 (1930). The record clearly establishes the Appellant presented evidence to the jury in the form of both exhibits and witness testimony. Therefore, Appellant's argument is without merit.



ORDER

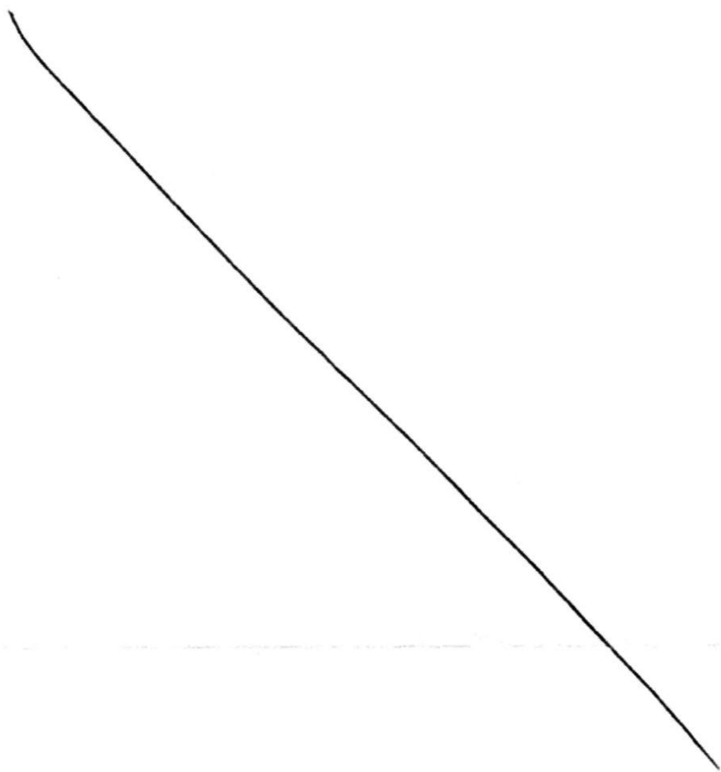
For foregoing reasons, this Court finds that the conviction of the lower court is **AFFIRMED**.

AND IT IS SO ORDERED.



ALISON RENÉE LEE
Presiding Judge

August 18, 2014
Columbia, South Carolina



FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4003525

City of Columbia — PLAINTIFF(S)

Marie Therese Assa'ad Faltas — DEFENDANT(S)

Submitted by: ____________ Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other ____________

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other ____________

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other ____________

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

2014 OCT 24 AM 9:05

RECEIVED
OCT 31 2014
SC Court of Appeals

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : ____________

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge ____________ **Judge Code** ________ **Date** ____________

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _________, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 24 October 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Jessica Mangum

Orin Gail Briggs
Marie Therese Assa'ad Faltas

Tristan Michael Shaffer

Marie Therese Assa'ad Faltas

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter ____________

Clerk of Court Jeanette W McBride

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

City of Columbia,) DOCKET NO.: 2013-CP-40-3525

Respondent,

v.

Marie Therese Assa'ad-Faltas,

Appellant.

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SC Court of Appeals

2014 OCT 24 AM 9:02

ORDER

This matter comes before the Court on Appellant's Timely Rule 59(e) to Reconsider and Vacate the August 19, 2014 Order. A hearing on the appeal was held on December 13, 2013. Thereafter, an Order was signed on August 19, 2014 and filed the same day affirming the conviction of the lower court. Appellant filed the present motion on August 27, 2014 and filed a Timely Supplement to Appellant's Timely Rule 59(e) to Reconsider and Vacate the August 19, 2014 Order on August 29, 2014. Appellant's arguments will briefly be addressed in turn.

I. Jurisdiction of the Trial Court

Appellant contends that the trial court, the Columbia Municipal Court, did not have proper jurisdiction over her case because the "Uniform Ordinance Summons" issued to Appellant on October 20, 2011 was fatally defective as it did not list a code section. Although not previously raised, Appellant contends the issue of subject matter jurisdiction may be raised at any time in a proceeding pursuant to Rule 12(h), SCRCP. Appellant attached to her motion the Uniform Ordinance Summons she received.

S.C. Code Ann. § 56-7-80(d) provides that "Service of a uniform ordinance summons vests all magistrates' and municipal courts with jurisdiction to hear and dispose of the charge for which the ordinance summons was issued and served." The Uniform Ordinance Summons Appellant received clearly states that the City alleges she violated Section 106.1 and describes the violation to be for "unlawful acts 1st offense." Appellant's trial was for the charge of "unlawful acts, 1st offense." While Appellant is correct that subject matter jurisdiction may be challenged at any time, at trial, Appellant did make the argument that Section 106.1 was improper for the Uniform Ordinance Summons, and the court stated "106.1 is proper to enforce the other sections that have been put forward...." *See* Transcript of Record at 245 (April 11,

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2013). Therefore, this Court affirms that the Uniform Ordinance Summons is sufficient to confer jurisdiction and is not defective.

Similarly, Appellant complains that the Uniform Ordinance Summons did not give her notice of what items the City required her to remove after she had removed cardboard cylinders. Notice of the specific items is not required under a Uniform Ordinance Summons. Pursuant to S.C. Code Ann. § 56-7-80, the only requirements are:

> "An ordinance summons must cite only one violation per summons and must contain at least the following information:
> (1) the name and address of the person or entity charged;
> (2) the name and title of the issuing officer;
> (3) the time, date, and location of the hearing;
> (4) a description of the ordinance the person or entity is charged with violating;
> (5) the procedure to post bond; and
> (6) any other notice or warning otherwise required by law."

All of these requirements have been met. Appellant's motion is denied on this ground.

II. Incorrect Facts in the August 19, 2014 Order

Appellant points out factual errors contained in this Court's August 19, 2014 Order. Appellant is correct that she filed her Notice of Intent to Appeal on April 25, 2013, not June 17, 2013, as the Order states. Appellant also contends that the court still does not have all of the exhibits and transcripts and supplemented the records with additional transcripts. This Court acknowledged in the August 19, 2014 Order that exhibits had been missing, but it stated it had all exhibits necessary to rule on the appeal. No additional exhibits are needed to rule on the issues Appellant preserved and raised in her appeal. Third, Appellant claims that while the Order uses the term "citation," she received a "Notice of Violation" and later the "Uniform Ordinance Summons." This claim is correct; no document is titled "citation." None of these scrivener's errors affect the Court's ruling on the appeal.

III. Appellant's Right to Self-Representation in Criminal Cases

Appellant argues that it was error for this Court to not acknowledge that Appellant repeatedly asserted her right to self-representation in criminal cases. This Court does recognize that throughout the proceedings related to this appeal, Appellant asserted her right to self-representation and wished to proceed pro se at trial. However, the South Carolina Supreme Court clearly stated in an Order issued on January 30, 2014 that even in criminal matters, Appellant's "right to proceed pro se as a criminal defendant is not absolute and may be forfeited,

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on a case-by-case basis, at the discretion of the trial court." There is no evidence the magistrate court abused its discretion in not allowing Appellant to proceed pro se. In fact, it appears from the record that at a hearing before circuit court Judge Barber regarding relieving Appellant's appointed trial counsel, Judge Barber gave serious consideration in allowing Appellant to proceed pro se at trial. *See* Transcript of Record at 20-23 (February 13, 2013). However, he ultimately did not make that ruling; therefore, Appellant's motion is denied on this basis.

IV. Appellant's Right to be Tried by a Judge Whose Interests Are Not Adverse to Hers

Appellant argues that the presiding trial judge, Judge Solomon, is appointed by and "serves at the pleasure of" City Counsel, represents the City as a private lawyer, and is an agent of the City; therefore, it was error for him or any City of Columbia judges to preside over Appellant's cases. Appellant states that the City Council appoints Columbia Municipal Court judges who, as agents of Appellant's adversary in this case, were one-sided and unfair. Similarly, Appellant contends that the City's attorneys and City's judges are intertwined because City attorneys recommend to City Council the renewal or nonrenewal of judges' terms. Appellant made this argument in a brief previously submitted to the court; however, it was not properly raised and preserved at trial; therefore, this Court did not address it in its August 19, 2014 Order. Regardless, Appellant has not presented any evidence of the trial judge in her case being one-sided or unfair other than broad statements, and this Court does not find any evidence of that in the record.

V. Right to not be Prosecuted by a City Attorney

Appellant argues that prosecution of a crime in any court in the state can only be by the Attorney General and the Circuit Solicitors and their appointed and sworn designees. However, City of Columbia Ordinance 2-115 states, "The city attorney shall prosecute and defend the city in all actions and appear on behalf of the city and its officers in legal proceedings." As discussed in this Court's August 19, 2014 Order, municipal ordinances are presumed to be valid and constitutional. Therefore, City Attorneys do have the authority to prosecute cases in Columbia Municipal Court.

Appellant also contends that Assistant City Attorney Fernandez and the Office of the City Attorney were adverse to Petitioner in civil matters at the same time he was prosecuting Appellant in this trial. Appellant states that Fernandez acting as a prosecutor violated both state law and the federal Constitutional due process guarantees. Appellant also contends the City's

attorneys used their prosecutorial powers to file false criminal charges against Appellant because she filed civil suits against the City. Appellant made this argument in a brief previously submitted to the court; however, it was not properly raised and preserved at trial; therefore, this Court did not address it in its August 19, 2014 Order. Regardless, this Court was not presented with any evidence of pending civil cases at the time of this trial or any evidence of prejudice because of pending cases. Additionally, applying Appellant's reasoning would lead to the result that by filing a civil lawsuit against the City, a person could insulate himself from any criminal prosecution by the City. This basis for granting Appellant's appeal is denied.

VI. Right to a Speedy Trial

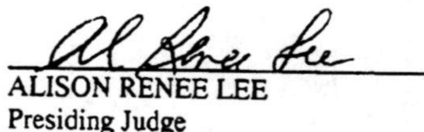
Appellant contends that her rights to a speedy trial were violated. This matter was presented to the court at multiple stages through Appellant's proceedings, including at the April 10, 2013 pretrial hearing. *See* Transcript of Record at 17 (April 10, 2013). Upon a review of the record, it appears that Appellant did not want a speedy trial for the present case, but rather wanted other trials to be held before this trial. *See id.* at 20-21. Appellant cannot complain that her right to a speedy trial was violated in this case because it was tried before other pending matters. Therefore, her motion is denied on this basis.

VII. Other Arguments and Claims of Errors

Any other arguments Appellant made in her motion for reconsideration are not addressed because they do not provide any material fact or principle of law that either was overlooked or disregarded. After careful consideration of the record in this case, this Court is unable to find any error of law or fact not appropriately considered.

Accordingly, this Court hereby **DENIES** Appellant's Timely Rule 59(e) to Reconsider and Vacate the August 19, 2014 Order. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

October 23, 2014
Columbia, South Carolina