BEFORE THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

Appellate Case No. 2015-~~000246~~ M.A.

APPEAL from RICHLAND COUNTY Court of Common Pleas
Alison Renée Lee, Circuit Court Judge
Circuit Court Case No. 2013-CP-40-03522

City of Columbia, South Carolina, Respondent,

v.

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

Timely Appeal, Concise Showing of Necessity of this Appeal being Filed with This Court, And Motion for the Appointment of Counsel to Represent Petitioner in this Case *before This Court*

Marie-Thérèse Assa'ad-Faltas, MD, MPH, hereby timely appeals to this Court from the attached 17 April 2015 ORDER by SC Circuit Judge Lee, which Richland County's Clerk of Court did not meter until 22 April 2015 and did not actually place in the mail until 23 April 2015 (both facts evidenced by the attached envelope) and which Dr. Assa'ad-Faltas did not receive until Saturday, 25 April 2015.

This appeal should be before this Court as the threshold structural error of denial of Dr. Assa'ad-Faltas' constitutional right to self-representation was caused *solely* by this Court's 8 April 2011 ORDER and SC's Chief Justice Toal's October 2012 "Administrative Order" later affirmed by this Court, both of which were later reconsidered and limited by this Court. For Dr. Assa'ad-Faltas' appeal to receive a fair hearing, this Court is asked to hold that a trial held under this Court's later-retracted errors was invalid. No lower court was willing and/or is able to do that. Further, many of the other issues, including whether the City of Columbia may legislate or hold court at all, are of great public importance; and a correct ruling thereon would promote judicial economy and rehabilitate the legacy of SC's Chief Justice Toal before retirement.

As a mere sample of Dr. Assa'ad-Faltas' being the very opposite of "frivolous" is her having raised the invalidity of SC's "last argument rule" both at Columbia's Municipal Court ("CMC") and the SC Circuit Judge Lee, as shall, God willing, be evidenced from the transcript of the 13 December 2013 hearing. Dr. Assa'ad-Faltas was recently pleasantly surprised to see that this Court is acting to change that rule.

Without waiving her right to self-representation in all matters, Dr. Assa'ad-Faltas **hereby moves this Court to order that the transcript of the 13 December 2013 hearing be provided at state expense and to appoint counsel for Appellant in this criminal appeal with strict supervision by this Court that such counsel faithfully and diligently discharge his/her duty.**

Respectfully submitted on 4 May 2015 and served the same day by personal delivery of a copy thereof to the City Attorney for the City of Columbia, Attorney for Respondent, at her office located at 1401 Main Street, Columbia, South Carolina, 29201, all God so willing, and also served on Richland County's Clerk of Court and on SC's Attorney General by hand-delivery to their respective offices on 4 or 5 May 2015, depending on whether the filed-stamped copy is returned by the Clerk of this Court on 4 or 5 May 2015, all God so willing.

Marie-Thérèse ~~Assa'ad-Faltas, MD, MPH~~
P.O. Box 9115, Columbia, SC 29290
Phone: (803) 783-4536 e-mail: Marie_Faltas@hotmail.com

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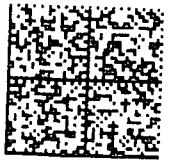

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4003522

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:

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 Alan Lee **Judge Code** _____ **Date** 4/17/2015

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 17 day of April 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

David A Fernandez

Tristan Michael Shaffer

Marie Therese Assa'ad Faltas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Marie Therese Assa'ad Faltas

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, Respondent, v. Marie Therese Assa'ad-Faltas, Appellant.	)	DOCKET NO.: 2013-CP-40-3522

2015 APR 17 PM 3:02
RICHLAND COUNTY FILED
MARIETTE W. HARRISON C.C.P. & G.S.

ORDER

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 court-appointed 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 appeal was criminal in nature, and Appellant was allowed to represent herself for the purposes of the hearing. *See* South Carolina Supreme Court Order, November 6, 2013.[1]

BACKGROUND

This matter arises from an incident occurring on September 11, 2009 where Dinah Steele Mason alleged that Appellant pushed or struck her in the chest. Emergency personnel were called, and City of Columbia police officers were dispatched to investigate the allegations. The Appellant was then charged with simple assault. A bench trial was held on April 25, 2013 in Columbia Municipal Court with the Honorable Carl L. Solomon presiding. Appellant was represented by Ted Lupton, Esquire. Respondent was represented by David Fernandez, Esquire. Appellant was found guilty and sentenced the same day to twenty days imprisonment. On April 26, 2013, Appellant filed a Notice of Appeal with the municipal court. A transcript of the proceeding was filed by the municipal court. Subsequent to the hearing, this Court ordered the

[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.

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.

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. In criminal cases, the appellate court reviews errors of law only. *City of Rock Hill v. Suchenski*, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007). The circuit court is bound by the magistrate court's findings of fact if any evidence in the record reasonably supports them. *State v. Gordon*, 408 S.C. 536, 540, 759 S.E.2d 755, 757 (Ct. App. 2014), *cert. granted* (Nov. 19, 2014). 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 Appeal lists the grounds for appeal as "failure to direct a verdict of Not Guilty upon the failure of the City to prove any injury to the victim, the denial of her right to represent herself," and "any other grounds." At the hearing on the appeal, this Court was able to discern twelve reasons Appellant argued as the basis for her appeal: 1) the presiding judge should have recused himself; 2) City does not have authority to preside over this case based upon sovereignty principles; 3) the charge was preempted by State law; 4) the charging statute is void for vagueness; 5) the evidence presented did not meet the elements of an assault; 6) the jury panel was improperly selected; 7) Appellant waived her right to a jury trial under duress; 8) Appellant was not able to present a complete defense; 9) City's witness Charlene Crouch was not an independent witness; 10) City engaged in prosecutorial misconduct; 11) Appellant's speedy

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trial rights were violated; and 12) the presiding judge did not consider all appropriate information at sentencing.[2] This Court will address each of these arguments in turn.

DISCUSSION

I. Appellant's right to self-representation in criminal cases.

Appellant argues she repeatedly asserted and was denied her right to self-representation in criminal cases. This Court recognizes that throughout the proceedings related to this case, 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, on a case-by-case basis, at the discretion of the trial court." In fact, it appears from the record that at a hearing in circuit court prior to the trial regarding whether to relieve Appellant's appointed trial counsel, Judge Barber seriously considered allowing Appellant to proceed pro se at trial. *See* Transcript of Record at 20-23 (February 13, 2013). Based upon the South Carolina Supreme Court's order on Appellant's right to proceed pro se, there is no evidence the municipal court abused its discretion in not allowing Appellant to proceed pro se at trial. Therefore, this argument does not present any error of law.

II. Whether the presiding judge should have recused himself.

Appellant argues that the presiding trial judge, Judge Carl L. Solomon, is appointed by 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 and at the hearing on her appeal; however, it was not properly raised and preserved at trial. In fact, Appellant admitted at the hearing that a motion for Judge Solomon to recuse himself was never made. Additionally, Appellant chose to have a bench trial rather than a jury trial; therefore, she chose to have Judge Solomon, rather than a jury, as the

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[2] 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.

finder of fact. Regardless, Appellant has not presented any evidence the trial judge in her case was one-sided or unfair other than broad statements, and this Court does not find any evidence in the record to support her claims.

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

Appellant makes several arguments related to whether the City is allowed to regulate and prosecute cases based upon the principle of 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 the municipal court system is unconstitutional. The legislature 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). This argument does not present any error of law.

IV. Whether the charge was preempted by State law.

Appellant argues that her assault charge was preempted by State law. Appellant was charged with simple assault under City of Columbia Ordinance 14-31. Appellant claims that the City itself argued at trial that the charge was preempted by State law, but her attorney refused to make that argument. Before the trial commenced, the City did argue that the legislature enacted the crime of "assault and battery in the third degree" since the time of Appellant's alleged incident, although the Ordinance was and is still in place. Transcript of Record at 2-3 (April 25, 2013). The City asked the presiding judge if he had a preference as to whether he would like the trial to proceed under simple assault or assault and battery in the third degree, as it appeared the simple assault was now preempted by assault and battery in the third degree. *Id.* Appellant's counsel acknowledged that Appellant herself believed the charge was preempted as well, but stated that he thought the trial should go forward as simple assault because the legislature did not enact the statute until after the incident in question had occurred. *Id.* The City and the Court agreed. *Id.* Appellant presented a motion to the Court after this discussion took place, but before the trial began, that she wrote personally. This motion apparently also argued that the City Ordinance was preempted. *See id.* at 14-15. The Court denied this motion without reason. *See id.*

While Appellant argued that the ordinance was preempted at the hearing and in a motion she wrote personally, Appellant's counsel in fact argued the opposite at trial—that the charge was not preempted by State law. At the hearing on the appeal, Appellant herself admits that her

trial counsel did not make an argument for preemption. Since Appellant was represented by counsel, the court must accept the counsel's, and not the client's, arguments. *See, e.g., State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998) (no right to hybrid representation). Regardless, the legislature criminalized assault and battery in the third degree in 2010 pursuant to S.C. Code Ann. § 16-3-600, after the incident in question. There is no indication it was to be applied retroactively. Therefore, the trial court committed no error of law in proceeding under the city ordinance.

V. Whether the statute is void for vagueness.

Appellant argues that the ordinance she allegedly violated is void for vagueness. "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).

City Ordinance 14-31 reads:

> 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 any private or public place within the corporate limits of the city.

This issue was raised at trial when Appellant presented to the court a pretrial motion she wrote personally. The Court denied this motion without stating a reason. Transcript of Record at 14-15 (April 25, 2013). Upon a review of the ordinance, this Court does not find that it is 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 ordinance is not void for vagueness.

VI. Whether the evidence presented satisfied the elements of assault.

Appellant argues that the facts set forth at trial did not satisfy the elements of assault; therefore, both a directed verdict should have been granted in her favor and the verdict should

have been not guilty. Specifically, Appellant argues that the alleged victim did not suffer from any reasonable fear and did not suffer an injury.

"On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State." *State v. Bailey*, 368 S.C. 39, 44-45, 626 S.E.2d 898, 901 (Ct. App. 2006). "When ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence, not its weight." *Id.* "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the [factfinder]." *Id.* (quoting *State v. Lollis,* 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001)).

Appellant was charged with simple assault. At trial, the City presented the testimony of Dinah Steele Mason, the alleged victim, who testified that Appellant "slammed [her] in the chest three times." Transcript of Record at 18 (April 25, 2013). She stated that the assault was unwanted, that she was fearful, that Appellant was yelling at her, and though she did not have any physical injuries, she had "mental" injuries because this event contributed to her having a mental breakdown. *Id.* at 19-21, 28, 34. Mason stated in her 911 call that Appellant "harassed [her] and pushed on [her]." *Id.* at 25. Additionally, the City presented testimony of a witness, Charlene Crouch, who stated that she observed Appellant pushing papers into Steele's chest and acting hostile. *Id.* at 42-43. Appellant then moved for a directed verdict on the basis that the City had not shown that an assault occurred. *Id.* at 47. The Court denied this motion without stating a reason. *Id.* Based on this testimony, viewing it in the light most favorable to the City, evidence existed to support a finding that a simple assault did occur. Accordingly, the trial court did not commit an error of law in denying Appellant's directed verdict motion.

Similarly, Appellant argues that it was error for the judge to find Appellant guilty at the conclusion of the case. Because the trial was a bench trial, the trial judge was the finder of fact. "[A]n appellate court is bound by the trial court's factual findings unless they are clearly erroneous." *State v. Taylor*, 411 S.C. 294, 299, 768 S.E.2d 71, 74 (Ct. App. 2014). Evidence exists in the record to support the judge's factual findings. Therefore, there is no basis to overturn the guilty verdict based upon an argument that the evidence did not support the charge of simple assault.

Additionally, Appellant argues the court should have employed the common law definition originating in *State v. Sanders*, 92 S.C. 427, 75 S.E. 702 (1912). *State v. Sanders*

defined assault as an attempt or offer to commit a violent injury upon the person of another, coupled with the present ability to do so. *Sanders, supra*; *see also Matter of McGee*, 278 S.C. 506, 507, 299 S.E.2d 334, 334 (1983) (explaining the *Sanders* definition). In closing arguments, Appellant's counsel pointed to *State v. Jones* for the definition of simple assault, which used the same definition as that used in *Sanders*. *See State v. Jones*, 133 S.C. 167, 130 S.E. 747 (1925), *overruled for other reasons*. It appears from the transcript that he also provided a copy of the case to the court. Transcript of Record at 79-80 (April 25, 2013). Counsel then discussed the statutory definition of assault and battery in the third degree established in 2010 that provides "[a] person commits the offense of assault and battery in the third degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so." *Id.; see also* S.C. Code Ann. § 16-3-600. It is apparent the trial judge was aware of both the common law definition of assault established in *Sanders*, reiterated in *Jones*, and the statutory definition. The trial judge stated he considered all of the definitions provided in making his ruling. *Id.* at 89-90. After the judge found the Appellant guilty, Appellant's counsel actually inquired of the judge what definition of assault he used to make his decision. *Id.* at 90. Judge Solomon declined to state an exact definition, saying he "used the definition of assault pursuant to the law." *Id.* This Court acknowledges that the common law definition of assault as defined in *Sanders* was the correct definition to use because Section 16-3-600 had not yet been enacted at the time of the incident. However, based on the record, there is evidence to support the finding of guilt under the common law definition. The lower court made no error of law in its rulings.

VII. Whether the jury panel was improperly selected.

Appellant argues that the jury panel was improperly selected. The day before her trial for simple assault, the court held jury selection for the simple assault trial as well as another trial involving Appellant for a trespassing charge. The selection for the trespassing charge was held first. Transcript of Record at 3-8 (April 24, 2013). The court then instructed the remaining members of the panel that there would be another trial the next day and proceeded to select the jury for that case from the members of the panel who were not selected for the trespassing trial. *Id.* at 9. Appellant objected to striking the second jury from the same jury pool because the selected jurors would have knowledge that Appellant was tried for a criminal violation the day before their trial. *Id.* at 16. The court overruled this objection and told Appellant she could

prepare a curative charge if she wished. *Id.* at 16-17. The next day, Appellant decided to waive her right to a jury trial and proceed with a bench trial. Transcript of Record at 9-11 (April 25, 2013); *see also* Part VIII, *infra*. Because Appellant decided to waive her right to a jury trial, this issue is now moot. Appellant did not proceed with the jury selected, and whether it was improperly selected is inconsequential. As discussed below, Appellant freely chose to waive her right to a jury trial.

VIII. Whether Appellant's right to a jury trial was waived under duress.

Relatedly, Appellant argues that her right to a jury trial was improperly waived because she waived it under duress. Appellant claims the duress was the trial judge threatening to hold her in contempt of court. Before the trial, Appellant informed the court that she had a fractured knee that was painful. Transcript of Record at 3 (April 25, 2013). The court informed Appellant that she could remain seated for the trial and that she was not to be disruptive during the trial. *Id.* The court then had a discussion with the parties as to the extent the previous history between Appellant and various witnesses could be discussed at the trial. *Id.* at 7-8. The judge stated that only events on the date of the alleged assault could be discussed; no testimony about prior relations or disagreements would be allowed. *Id.* Appellant stated that under these terms she could not have a jury trial. *Id.* at 8. Respondent agreed to a bench trial. *Id.* at 9. The court informed Appellant that with a bench trial, she would have greater latitude in the evidence she wished to present. *Id.* at 10. Appellant stated that she wished to have the bench trial because she would not be precluded from presenting all of the evidence she wished to present, she was dissatisfied with the court's decision to draw two juries from the same pool, and because she did not want to risk being held in contempt of court for being disruptive because of the pain in her knee. *Id.* at 11. She did state that her decision was "under duress." *Id.* The Court then dismissed the jury. *Id.* at 13.

This Court does not find that Appellant waived her right to a jury trial under duress. While Appellant disagreed with the court's pretrial rulings, the rulings do not rise to the level of duress. Additionally, the court informing Appellant that if she was disruptive in front of the jury she could be held in contempt of court does not constitute duress. Appellant's attorney stated that he advised his client regarding whether or not to have a jury trial. *Id.* at 11. Based upon this information, this Court finds that Appellant's decision to have a bench trial was freely made.

IX. Whether Appellant was given the opportunity to present a complete defense.

Appellant argues she was not given the opportunity to present a complete defense because she was precluded from testifying for herself. She claims she could not physically reach the stand to testify. Additionally, the trial judge told her that if she proved to be a "distraction" she would be held in contempt of court. However, at the trial, Appellant did testify on her behalf. *See* Transcript of Record at 51 (April 25, 2013). In fact, the trial judge allowed Appellant five uninterrupted minutes to say whatever she wanted to the court at the end of her testimony. *Id.* at 74. This Court understands based upon Appellant's arguments in filings submitted to the court that she believed her counsel should have tried to obtain and submit as evidence various documentation, which he did not do. However, any grievances Appellant might have of the way her counsel controlled her defense are not appropriate for this court to consider at this time. This Court is unable to distinguish what else Appellant wished to put before the court at the time of her trial that the trial court did not allow her to present. Appellant was given the opportunity to present a complete defense.

X. Whether Charlene Crouch was an independent witness.

Appellant argues Charlene Crouch was not an "independent witness" for the City and that the City lied about the status of Crouch's pending criminal charges. Appellant has also submitted to this court multiple documents regarding Crouch and her criminal record.

Before the trial, there was a discussion regarding Crouch's criminal record and which charges could be used for impeachment purposes. Transcript of Record at 6-7 (April 25, 2013). Appellant stated she knew of two charges from 2012 that she would like to use for impeachment purposes, but the City told the court that one was still pending and one it did not know about. The court did not allow these charges to be discussed. *Id.* at 7. Appellant argues the City misrepresented this information to the court, and she believes Crouch had other pending charges as well. The City states that it presented to the court the information it had at the time according to its records. There is no evidence before this Court that the City knowingly made any misrepresentation to the trial court regarding Crouch's record. Regardless, even if there were other pending charges or other charges on Crouch's criminal records, there is no evidence that the presiding judge would have allowed these charges to be admissible for impeachment purposes. Therefore, the appeal is denied on this basis. It is also noted that at the hearing, Appellant argued that her trial counsel should have questioned Crouch on certain subjects or

made certain arguments regarding Crouch. Issues regarding deficiencies by Appellant's attorney are not appropriate for this court to consider in an appeal.

XI. Whether there was prosecutorial misconduct.

Appellant argues that various actions or statements by the prosecutor for the City constituted prosecutorial misconduct. Specifically, at the hearing, Appellant stated that the City's comments that she and Crouch were friends to the trial court was prosecutorial misconduct because it was untrue. This Court does not find that this misstatement amounts to prosecutorial misconduct. There is no evidence that the statement was deliberate or caused any prejudice to Appellant. *See State v. Quattlebaum,* 338 S.C. 441, 448, 527 S.E.2d 105, 109 (2000) (defendant must show either deliberate prosecutorial misconduct or prejudice). Additionally, Appellant argues that the City used the civil standard, rather than the criminal standard for assault, which was also prosecutorial misconduct. As previously discussed, there is no evidence that the trial court considered the wrong standard for simple assault; therefore, there is no evidence of any prejudice. Therefore, there was no prosecutorial misconduct in this case.

XII. Whether Appellant's speedy trial rights were violated.

Appellant contends that her right to a speedy trial was violated as her case had been pending for approximately four years. "In determining whether a defendant has been deprived of the right to a speedy trial, the court must consider four factors: 1) length of the delay; 2) reason for the delay; 3) the defendant's assertion of the right; and 4) prejudice to the defendant." *State v. Pittman*, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (citing *Barker v. Wingo,* 407 U.S. 514, 530 (1972)). "Although there is no fixed time in which a defendant must be tried, the right to a speedy trial may be violated where the delay is arbitrary or unreasonable." *Id.* (citing *State v. Waites,* 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978)).

Appellant did raise her right to a speedy trial throughout the proceedings. *See, e.g.*, Transcript of Record at 73-77 (March 12, 2013).[3] On March 12, 2013, a hearing was held before Judge Solomon following an Order from the Chief Justice dated March 7, 2013 requiring all of Appellant's pending matters to be concluded promptly. *See* South Carolina Supreme Court Order, March 7, 2013. At the time of the hearing, there were five pending cases with Appellant as a Defendant. *See* Transcript of Record at 13 (March 12, 2013). Following this hearing, all

[3] The first record this Court has of Appellant raising her right to a speedy trial for this case specifically was on March 12, 2013. However, this Court does not doubt that Appellant raised her right prior to this date.

five of these cases were resolved by April 26, 2013. It is clear the court system attempted to resolve Appellant's cases as quickly as possible as soon as directed to do so. Although it was four years before Appellant's cases were tried, there were numerous reasons for this amount of time, including the fact that all of the municipal court judges except one were recused, that Appellant had counsel relieved and appointed multiple times, and the number of cases pending. Additionally, Appellant does not allege any prejudice she suffered for not having this case tried sooner. Therefore, this Court finds that Appellant's right to a speedy trial was not violated.

XIII. Whether the judge fully considered and understood all information at presented.

Finally, Appellant argues that at her sentencing, the trial judge indicated he did not fully understand all of the facts Appellant presented during the course of the trial. Specifically, he indicated that he did not understand Appellant's allegations that the police coerced witnesses to lie about the incident. *See* Transcript of Record at 127 (April 26, 2013) (discussing information it finds inconsistent). Appellant argues that if the court did not understand her allegations, the presiding judge should have questioned her about the information or asked her for proof of her allegations, which she claims she had and could have provided, and it was inappropriate for him not to do so. There is no requirement for the court to do any investigation or find out any more information than what was presented to it. The judge committed no error regarding this information.

ORDER

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

AND IT IS SO ORDERED.

Alison Renee Lee

ALISON RENEE LEE
Presiding Judge

April 17, 2015
Columbia, South Carolina

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#12

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4003522

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 _____

2015 APR 17 PM 3:02

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:

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 Alan Shree Lee **Judge Code** _____ **Date** 4/17/2015

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 17 day of April 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

David A Fernandez

Tristan Michael Shaffer

Marie Therese Assa'ad Faltas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Marie Therese Assa'ad Faltas

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)