

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

CITY OF COLUMBIA,

RESPONDENT,

V.

MARIE-THERESE ASSA'AD-FALTAS,

APPELLANT

APPEALLATE CASE NO. 2015-000941

RECORD ON APPEAL

JOHN H. STROM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

BRUCE H. GREENBERG
Attorney for the City of Columbia
1401 Main St.,
Columbia, SC 29201

Attorney for Respondent

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1 wife called me and told me that Judge Barber had called
2 and said that he wanted me to come and -- but Mr. Briggs
3 is in the hospital and I have ---

4 THE COURT: Ma'am, she contacted us. That
5 doesn't have anything do with your being here at 9:30.

6 DR. FALTAS: Well, actually ---

7 THE COURT:.. She contacted us and indicated that
8 he was in the hospital and would not be able to appear
9 but wanted us to go forward with it. Now -- but I feel
10 very uncomfortable about going forward with it without
11 Mr. Briggs being here. So we're -- we certainly won't.
12 But when I schedule something, your best practice is to
13 be here 15 minutes before it's scheduled.

14 DR. FALTAS: Sir, I had waived my appearance as
15 far as ---

16 THE COURT: Well, then you came.

17 DR. FALTAS: I came because of the developments
18 ---

19 THE COURT: I don't care why you came. You came
20 and we were waiting on you.

21 DR. FALTAS: Sorry, sir.

22 THE COURT: All right. We are here this morning
23 for a -- Mr. Lupton has filed a motion to be relieved of
24 counsel in the matter of State versus Marie Faltas.
25 Ms. Faltas has certain warrants pending in the City of

1 Columbia and Mr. Lupton had been appointed -- how long
2 ago, Mr. Lupton, a month ago or so?

3 MR. LUPTON: Your Honor, approximately one month
4 ago, I believe it was January 18 of 2013.

5 THE COURT: All right, that's a little over a
6 month, that's 34 days that he was appointed. He did not
7 volunteer for this matter although I did discuss it with
8 Mr. Lupton, his willingness to -- to do this and he
9 certainly indicated he would not resist whatever the
10 Court ordered him to do. He felt like it was his duty
11 and responsibility, as a member of the Bar, to handle
12 matters that the Court thought that he should handle. He
13 wasn't seeking any work at that time on a appointed (sic)
14 basis.

15 I had -- I had a number of cases in the past to
16 relieve various counsel for Ms. Faltas as a result of
17 these matters pending in the City, one of which was the
18 Public Defender's office when they indicated they had a
19 conflict and could not represent the Defendant. And
20 there were two attorneys that were appointed by the
21 Clerk. I didn't appoint any of these people other than
22 Mr. Lupton.

23 When somebody was relieved, it was turned over
24 to the Clerk's office and they were supposed to appoint
25 the next person on the list. The next two individuals

1 that were appointed on behalf of the Defendant both asked
2 to be relieved because they had taken positions, I think
3 with the State of South Carolina, which would preclude
4 them from representing people on an appointed basis. And
5 another -- the next person appointed was a young lady in
6 -- what was her name, McCurry, and she asked to be
7 relieved because she said that she was not able to
8 represent Ms. Faltas, that she had harassed her and made
9 life difficult for her and was requesting a number of
10 things that Ms. McCurry did not believe that she could do
11 on behalf of Dr. Faltas.

12 I granted the request of Ms. McCurry and then
13 appointed Mr. Lupton who I know to be a seasoned
14 experienced attorney in dealings with him over the years
15 when he was both with the Solicitor's office in Richland
16 County and also in his private practice dealings in that
17 he would appear in front of me on a number of matters,
18 and I always believed that he was fully competent to
19 handle whatever he was handling and had the experience to
20 handle what I would consider a difficult client, and now
21 Mr. Lupton has made a motion to be relieved and I'll hear
22 from Mr. Lupton.

23 MR. LUPTON: Your Honor, may it please the
24 Court.

25 THE COURT: Yes, sir.

1 MR. LUPTON: Your Honor, I would submit,
2 although somewhat irrelevant now, the e-mail sequence and
3 also a copy of a letter and ask that they be made Court's
4 exhibits. The e-mail chain was primarily concerning her
5 waiver of her right to be present which is now
6 irrelevant. However, it does contain some matters that I
7 think are relevant to the issue of her pattern of abusive
8 harassing behavior.

9 (Whereupon, Court's Exhibit Number 1, E-mail
10 Chain, was marked for identification.)

11 (Whereupon, Court's Exhibit Number 2, Letter,
12 was marked for identification.)

13 MR. LUPTON: Your Honor, I began this
14 representation January 18th, the Court appointed me. I
15 was told verbally that I was going to be appointed. I
16 received the written Order at the beginning of the next
17 week. That afternoon, I received an e-mail ---

18 THE COURT: The afternoon that you were ---

19 MR. LUPTON: Appointed.

20 THE COURT: --- orally ---

21 MR. LUPTON: Orally, the 18th.

22 THE COURT: --- or you were -- the written?

23 MR. LUPTON: January 18th, Your Honor, ---

24 THE COURT: All right.

25 MR. LUPTON: --- is when Ms. Faltas first

1 contacted me. The opening e-mail contained statements
2 about that she hoped that I wasn't -- I had not been
3 ordered to aggravate her as others had been, words to
4 that effect.

5 From the beginning I have tried to work with
6 her. She has been -- you know, I feel that -- that her
7 conduct, starting with that first communication, has been
8 abusive in terms of insults towards myself, insults
9 towards those that are friends of mine, colleagues of
10 mine, towards the Court, towards the judicial system
11 generally.

12 Your Honor, I've tried to ignore all these.
13 I've tried to explain to her that she's taking positions
14 that are contrary to the law. She has made demands, not
15 requests but demands, that take actions which I have
16 explained to her are contrary to my legal ethics, filing
17 motions that I explained are not legally merited and thus
18 would be frivolous improper motions that I am prohibited
19 from filing under my ethics. She has not accepted that
20 and has attempted to harass me into filing motions.

21 Your Honor, I have represented her in the past
22 for a period of about a month on a case in which I agreed
23 with her that the arrest was improper. She was similarly
24 abusive and harassing in that case but to a lesser degree
25 because I as agreeing with her was doing more or less

1 what she wanted. But this pattern has continued over
2 both representations. Your Honor, it's -- it's excessive
3 and extreme. She demands things that are not merited,
4 demands immediate responses even when I've tried to
5 explain that I have other matters I have to deal with.

6 Your Honor, I have spent hours every single day
7 with very few exceptions since I've been appointed on
8 this case dealing with her. She has accused me of lying
9 when I didn't respond in what she thought was a timely
10 fashion. There was one occasion which I told her that I
11 would get back to her the following evening. It was
12 Sunday that I was talking to her, I told her on Monday
13 evening I would be -- I would get back to her. About 8
14 or 9:00, she was sending me e-mails saying that evening
15 turns to night and this is another lie, that I haven't
16 gotten back to her because she defined evening
17 differently than I did.

18 It's just a pattern of abuse and harassive
19 behavior intruding into my personal life doing -- you
20 know, of course, she has a right to research her
21 attorneys but commenting on my personal appearance on my
22 website, my wife's appearance on the website, was saying
23 that our pictures were not very good and that she could
24 take better ones for us, trying to Facebook friend my
25 wife. Just things of that nature that over the course of

1 just over a month have created a situation where the
2 abuse and harassment is such that I cannot represent her.

3 And I've represented some very difficult
4 clients, I've represented clients that were verbally
5 abusive to me, I've taken it. I feel that as a member of
6 the Bar, it is my duty to represent my client, even if
7 they don't like me, even if they are abusive towards me.
8 My job is to represent their best interest. I've
9 attempted to my best ability to do that in this case.
10 I've had clients that have been physically threatening
11 towards me. I have not asked to be relieved because, you
12 know, my job is to represent those that I am appointed or
13 retained to represent.

14 But in this situation, her absolute demands that
15 I take actions, her refusal to accept reality, really,
16 has gotten to the point where I cannot represent her. And
17 this pattern is such that I don't think anybody can. I
18 don't think anybody can represent her unless they do what
19 she demands.

20 THE COURT: All right. Well, do you think your
21 -- here's the concern I have, Mr. Lupton, and I'm going
22 to need some clarification in my mind and it's probably
23 going to take a little bit of time, is -- and she has to
24 have an attorney. I mean, I don't feel confident that
25 whoever it is is going to change the relationship that

1 exists between her and that attorney from what has
2 existed between her and previous attorneys.

3 So, you know, at some point in time the buck has
4 got to stop. I'm not sure where that is. Do you think
5 it's so irretrievably broken that under any circumstances
6 you cannot, in good conscious, be able to represent her,
7 even with some assistance by the Court as to what she may
8 or may not do in terms of contacting your office?

9 MR. LUPTON: Your Honor, I think that she does
10 not see that she has done anything improper or wrong. I
11 think that she is absolutely firmly convinced in her
12 mind, that because her case ---

13 THE COURT: Well, I'm not talking about the
14 merits of the case.

15 MR. LUPTON: Well, I'm not either. I'm talking
16 about the fact that she is so firmly convinced in her
17 mind that her case is special, different and unique, that
18 she is absolutely justified in what she does.

19 THE COURT: Well, I understand and her case is
20 special, different and unique to her.

21 MR. LUPTON: And I've explained that.

22 THE COURT: As everybody's case is.

23 MR. LUPTON: And I've explained that.

24 THE COURT: But I can limit the manner in which
25 she can contact your office, it has to be in writing,

1 something other than e-mails or telephone. And if she
2 wants to have a conversation with you, she needs to tell
3 you what that conversation is in order -- and you make
4 the decision as to whether you respond to it or not. I
5 mean, I can do things like that. I can keep her away
6 from your office other than by invitation of you.

7 MR. LUPTON: She has not been to my office, Your
8 Honor. I've met her at her property. That's not a
9 problem. The communication in writing is preferred and I
10 asked her -- I told her that that was my preferred method
11 was e-mail. The problem is that she sends long ---

12 THE COURT: I can stop the e-mails, it will have
13 to be in writing, I mean, on a piece of paper just like
14 your letter. But, I mean, if you tell me that you can't
15 do it because it is in such a difficult state that you
16 can't do it under any circumstances and provide her the
17 legal representation that you believe she would be
18 entitled to and that you could provide under normal
19 circumstances, then that's a different story.

20 MR. LUPTON: Your Honor, I -- I don't think that
21 I can -- I don't think I could provide her with any kind
22 of representation that she will be satisfied with.

23 THE COURT: I'm not worried about whether she's
24 satisfied.

25 MR. LUPTON: And she has already threatened to

1 engage in litigation in Federal Court against me if I
2 attempt to continue to represent her.

3 THE COURT: Well, she can do it, she certainly
4 has the right to do what she wants to do in that regard.
5 She is subject to any sanctions or repercussions that the
6 Court might take if they believe that it's something that
7 is not proper or it's privileged, something of that
8 nature. We can't -- anybody can sue in this country, you
9 can sue about anything you want to sue about, whether
10 you're successful is a whole different ballgame. And
11 what happens as a result of your doing so, is a whole
12 different ballgame. So I don't know how to stop anything
13 -- anybody from -- shielding them from some lawsuit from
14 Ms. Faltas. But I know how to deal with it if in fact it
15 happens and it is frivolous, that determination.

16 Dr. Faltas, you want Mr. Lupton relieved?

17 DR. FALTAS: Yes, Judge.

18 THE COURT: What is it you want? You want to
19 represent yourself?

20 DR. FALTAS: Yes, Judge. And I have an absolute
21 constitutional right to do that. And I have done that
22 successfully, as you know. I had two false harassment
23 charges brought against me. I have ---

24 THE COURT: I -- I don't need a history. I know
25 to some extent what you have done and haven't done.

1 DR. FALTAS: And in fact ---

2 THE COURT: I'm just -- I want to know what you
3 want. I mean, my personal opinion is I -- I tend to
4 agree with you, you have a constitutional right to
5 represent yourself in a criminal matter so long as you
6 understand the ramifications of doing so.

7 DR. FALTAS: Not only do ---

8 THE COURT: But ---

9 DR. FALTAS: --- I understand them ---

10 THE COURT: Dr. Faltas.

11 DR. FALTAS: Yes -- yes, sir.

12 THE COURT: But there is an Order from the
13 Supreme Court that has set certain requirements relating
14 to you and I'm going to have to look at that Order as
15 well. But your preference is to represent yourself?

16 DR. FALTAS: Yes, Judge.

17 THE COURT: Subject yourself to whatever the
18 consequences are if you do so?

19 DR. FALTAS: Absolutely.

20 THE COURT: All right.

21 DR. FALTAS: And may I just say that in Faretta
22 versus California ---

23 THE COURT: I'm sorry, say that again?

24 DR. FALTAS: May I just say that in Faretta
25 versus California, the U.S. Supreme Court said that the

1 only tribunal in Anglo-American judicial history that
2 forced a lawyer on somebody is the Star Chamber. This is
3 what I am being subjected to, the Star Chamber ---

4 THE COURT: Dr. Faltas -- Dr. Faltas, respond to
5 my question.

6 DR. FALTAS: Yes.

7 THE COURT: That's all I want to hear from you.
8 If it can be answered in a yes or no, please do so.

9 DR. FALTAS: Yes, sir.

10 THE COURT: All right.

11 DR. FALTAS: And let me just tell you, this is
12 the same Supreme Court ---

13 THE COURT: Dr. Faltas, don't say another word
14 unless I ask you a question. Do you hear me?

15 DR. FALTAS: Yes, yes. You asked me the
16 question whether I hear you and I said, yes, and I didn't
17 say any other word.

18 THE COURT: You haven't stopped talking.

19 All right, Mr. Lupton, anything else you want to
20 tell me?

21 MR. LUPTON: No, Your Honor.

22 THE COURT: Anything else you want to tell me,
23 relating to ---

24 DR. FALTAS: Yes.

25 THE COURT: --- the motion. I don't ---

1 DR. FALTAS: Yes.

2 THE COURT: I don't want to hear anything else
3 about you want to represent yourself or who should
4 represent yourself or whatever you want, I don't want to
5 hear that.

6 DR. FALTAS: All right.

7 THE COURT: He's made a motion.

8 DR. FALTAS: Yes.

9 THE COURT: You have indicated here this morning
10 that you join in this motion, you want him relieved?

11 DR. FALTAS: I ---

12 THE COURT: Correct?

13 DR. FALTAS: Yes. Related to the motion, you
14 asked me I wanted -- if I wanted to say things. He has
15 left a lot of loose ends which under my -- my
16 representation of myself going forward all ---

17 THE COURT: Dr. Faltas.

18 DR. FALTAS: --- those loose ends, may I tell
19 you what they are because ---

20 THE COURT: No, ma'am. No, ma'am, we're not
21 getting into the merits of whatever his defense was or
22 anything like that. First of all, I don't want you
23 putting anything on the record about whatever it is that
24 you may have defenses ---

25 DR. FALTAS: He's -- he's given you

1 attorney/client privileged e-mails and he said that I
2 told him -- I wrote to him, it was a lie. My exact
3 words, and I hope he had the honesty of presenting that
4 e-mail. I said that's a promise broken. I did not use
5 the word lie. The person who used the word lie against
6 Mr. Lupton is now -- Justice Beatty. And that was
7 something in the newspaper. Now he says that ---

8 THE COURT: That doesn't have anything to do
9 with this case. Not one thing to do with this case.

10 DR. FALTAS: It has to do with that the ---

11 THE COURT: You don't get -- if an attorney is
12 the appointed, you don't get to approve who it is. You
13 have no say so whatsoever.

14 DR. FALTAS: I am entitled to effective
15 assistance.

16 THE COURT: You are not entitled to determine
17 who your lawyer is. You would have a right to file a --
18 some action after the fact and allege ineffective
19 assistance of counsel if in fact you believe that to be
20 an appropriate thing to do, if you're not successful in
21 whatever it is you're attempting to do. But at this
22 point, you have no rights as to who your lawyer is,
23 unless you want to go pay him.

24 DR. FALTAS: I cannot pay.

25 THE COURT: Well, I don't know about that.

1 DR. FALTAS: No, you do know about that.

2 THE COURT: I do not know about that, I've never
3 looked at your financial situation. I have never been
4 involved in anything about what you can pay, can't pay,
5 what money you have, don't have. I know nothing.

6 DR. FALTAS: Well, speaking of that, there has
7 been a request for reimbursement of expenses.

8 THE COURT: All right. Do you want me to deal
9 with that today?

10 DR. FALTAS: Yes, please.

11 THE COURT: All right. It's denied. I read it.
12 I read it yesterday when it was submitted by Mr. Briggs.
13 You don't have -- you're not entitled to be reimbursed.
14 You're not an attorney.

15 DR. FALTAS: But the Rule 602(g) ---

16 THE COURT: You're not entitled to be
17 reimbursed.

18 DR. FALTAS: It's not for my efforts, it's the
19 expenses that ---

20 THE COURT: Ma'am, you're not entitled for any
21 of that.

22 DR. FALTAS: Rule 602 -- so, sorry.

23 THE COURT: All right. You can take it and do
24 with it as you please. We will issue an Order saying
25 that your request for being paid from OID was denied.

1 DR. FALTAS: Well could you -- could then I ask
2 to please wait until Mr. Briggs is able to ---

3 THE COURT: You just asked with respect to your
4 portion. I'm going to wait on Mr. Briggs to see what --
5 he's made a request that he be paid as well.

6 DR. FALTAS: And may I just clarify?

7 THE COURT: We're certainly not going to -- when
8 I rule, then you say, hey, now I want to change my mind.

9 All right. Mr. Lupton, I'll have to take this
10 matter under advisement and I will issue an order in due
11 course, as quickly as I possibly can. I understand Dr.
12 Faltas' position. As I say, I'm going to have to look
13 into that Order that the Supreme Court has issued in this
14 matter. If in fact there is anything I can do to allow
15 her to -- well, let me ask you this. In case -- you
16 indicate you want to represent yourself?

17 DR. FALTAS: Yes, Judge.

18 THE COURT: All right. You understand that in
19 some instances a lawyer can be of assistance to you, you
20 understand that?

21 DR. FALTAS: I do and I do understand that in
22 other instances a lawyer can be very harmful.

23 THE COURT: All right. And you understand a
24 lawyer is -- has some education in excess of what you
25 have with respect to legal matters in this country?

1 DR. FALTAS: Not every lawyer has the education
2 in excess of what I have.

3 THE COURT: Every lawyer who practices in South
4 Carolina has more legal education that you have, every
5 single lawyer.

6 DR. FALTAS: I understand that the Judge is
7 saying that but it's not quite true. There are areas of
8 the law that I ---

9 THE COURT: I'm familiar with your knowledge of
10 the law in the matters that have been in front of me and
11 I'm familiar with the lawyers' knowledge of the law that
12 have been in front of me.

13 DR. FALTAS: What you are ---

14 THE COURT: My opinion is, they have more
15 knowledge than you do.

16 DR. FALTAS: What you are familiar with is that
17 there are areas of the law that lawyers know and some
18 judges, some judges know nothing about that I know a lot
19 about.

20 THE COURT: All right.

21 DR. FALTAS: For instance ---

22 THE COURT: I haven't seen that -- I have not
23 seen that yet, Dr. Faltas.

24 DR. FALTAS: Well, Judge Anderson, the Federal
25 ---

1 THE COURT: I have not seen that. I don't know
2 what Judge Anderson the Federal Judge ---

3 DR. FALTAS: The Federal -- on the record.

4 THE COURT: I don't know.

5 DR. FALTAS: He said, I was better than half the
6 lawyers who practice before him and that was on the
7 record.

8 THE COURT: Well, I know ---

9 DR. FALTAS: And that was ---

10 THE COURT: Look, I've just expressed my
11 opinion. I don't know, I've never seen you in Judge
12 Anderson's court. I've seen you in my court and I've
13 seen -- I've reviewed what you've done in other courts.
14 And you understand if you don't have a lawyer, you lose
15 whatever benefit they can bring, you lose that?

16 DR. FALTAS: Yes.

17 THE COURT: I know you have a long extensive
18 history of litigation, both in the civil courts and in
19 the criminal courts in South Carolina so I'm not going to
20 question you about that, and I don't know what your
21 education is but I know you have advanced degrees in a
22 number of subjects. So ---

23 DR. FALTAS: I'm a medical doctor and I hold a
24 masters ---

25 THE COURT: Ma'am.

1 DR. FALTAS: --- of public health.

2 THE COURT: Ma'am, hold on. So based on your
3 knowledge -- I mean, my knowledge that you have advanced
4 degrees, I don't think educational level is an issue in
5 this matter.

6 But -- so I do find that you understand what you
7 may be giving up if you elect to represent yourself. And
8 that you understand that you would have to comply with
9 all the rules of the -- of the Court and that you would
10 be subject to the same rules that any other person who
11 was practicing in the courts in the State of South
12 Carolina. But I'm going to have to find out what I can
13 do and can't do with respect to your allowing yourself to
14 represent yourself.

15 DR. FALTAS: In the meanwhile, Judge, may I ask
16 that Mr. Lupton not compromise my case and that he inform
17 me ahead of time? Because, for example -- and let me
18 give you one concrete example, of me telling him that
19 there is discovery that is old, three years ago. He
20 needs to file a new Rule 5 motion in writing ---

21 THE COURT: Well, you know ---

22 DR. FALTAS: In paper writing.

23 THE COURT: Well, he doesn't need to do anything
24 right now until I -- until I make a decision as to what
25 I'm going to do in this case.

1 DR. FALTAS: Well, he tells me that there is
2 trial on March 18th.

3 THE COURT: I will rule quickly. You're ready
4 to go to trial, aren't you?

5 DR. FALTAS: There is discovery.

6 THE COURT: Are you ready go to trial?

7 DR. FALTAS: With one proviso, that I need
8 discovery that I had been promised three years ago, in
9 writing, and as soon as Mr. Lupton ---

10 THE COURT: All right, I will ask you to do
11 this. Contact Mr. Fernandez who's the City Attorney,
12 contact him and if you know that there is discovery
13 that's still outstanding ---

14 MR. LUPTON: Your Honor, I have filed a Rule 5
15 motion in this case. I have been in contact with Mr.
16 Fernandez. He has stated to me, in the form of an e-mail
17 which I would consider to be a written communication,
18 that the discovery she is requesting does not exist. She
19 is specifically asking about videos. He says that it
20 does not exist. There is no video of the incident in
21 question.

22 THE COURT: All right, you got that?

23 DR. FALTAS: No, sir, I don't because you were
24 just telling me that e-mail is not acceptable, it has to
25 be ---

1 THE COURT: I said -- I didn't say it was not
2 acceptable. I never said that. I said what I might do
3 is if he continues to represent you is restrict how you
4 can communicate with him. That your communication with
5 him may not be through e-mail.

6 DR. FALTAS: Well, I have reason to be believe
7 ---

8 THE COURT: Ask him to -- ask him to send you a
9 letter saying that that discovery does not exist.

10 MR. LUPTON: Yes, Your Honor. And additionally,
11 Your Honor, with regards to the Supreme Court's Order, I
12 have discussed that Order with her and discussed the fact
13 that if she was to go forward without counsel, that in
14 the most extreme interpretation, she could be prohibited
15 from even speaking in her own defense at the trial. And
16 she says that was fine with her, that it was better than
17 having me. But ---

18 THE COURT: Everybody's entitled to their
19 opinion, so. All right, well, if you will follow up with
20 Mr. Fernandez. Is that how you pronounce it?

21 MR. LUPTON: Fernandez.

22 DR. FALTAS: Judge.

23 THE COURT: Then let -- send a copy of that to
24 the Defendant.

25 MR. LUPTON: Yes, Your Honor.

1 THE COURT: And of course if she represents
2 herself, then whatever you have in your file that will be
3 needed by her, you would need to give it to her. If
4 somebody else comes in, then you would need to give it to
5 them.

6 DR. FALTAS: Also I had asked him to get
7 documentation that we have given Mr. Fernandez reciprocal
8 discovery and he did not give me documentation from Mr.
9 Fernandez that Mr. Fernandez received the reciprocal
10 discovery. He just gave me an Affidavit from himself
11 that he sent it to him.

12 Your Honor, there is a trial going before the
13 Federal Judge Anderson on March 18th about the City of
14 Columbia having destroyed or concealed videos and
15 pretended they didn't exist. And that ---

16 THE COURT: All right.

17 DR. FALTAS: --- was the big Five Points case
18 arrest. I told Mr. Lupton that I do not believe ---

19 THE COURT: I ---

20 DR. FALTAS: --- there were three cars, three
21 ---

22 THE COURT: I don't care whether you believe it
23 or don't believe it.

24 DR. FALTAS: Well, there is follow up to
25 discovery to be had.

1 THE COURT: All right.

2 DR. FALTAS: And I'm asking that he does it ---

3 THE COURT: He's not doing anything from this
4 point forward other than confirming that they say that
5 they complied with all the discovery requests submitted
6 by Mr. Lupton.

7 DR. FALTAS: When can I get the actual
8 discovery?

9 THE COURT: That's enough.

10 DR. FALTAS: Okay.

11 MR. LUPTON: Your Honor ---

12 THE COURT: I will try and be in touch with you,
13 well today -- Friday, Thursday. We're just going to have
14 to see, so.

15 MR. LUPTON: Your Honor, I would like to submit
16 as Court's exhibit the Certificate of Service. It is
17 stamped as received by Ms. McCord (phonetic) from the
18 City of Columbia as far as that issue goes.

19 (Whereupon, Court's Exhibit Number 3,
20 Certificate of Service, was marked for
21 identification.)

22 THE COURT: What issue? That you served
23 discovery on them?

24 MR. LUPTON: Yes, Your Honor. I've given her a
25 copy of this, stamped by City Court the day that they

1 received it.

2 THE COURT: All right.

3 DR. FALTAS: The City Court is going to say they
4 had no opportunity to give it to Mr. Fernandez because
5 they have pulled that on me before.

6 THE COURT: All right, thank y'all.

7 MR. LUPTON: Thank you, Your Honor.

8 DR. FALTAS: Judge, I did not authorize him to
9 divulge except for one e-mail that ---

10 THE COURT: Thank you, ma'am. That's it.

11 ----- END OF TRANSCRIPT OF RECORD -----

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1 HAVE A FEDERAL LAWSUIT PENDING IN FEDERAL COURT AGAINST JEAN TOAL
2 SAYING THAT IT IS UNCONSTITUTIONAL FOR HER TO EXERCISE BOTH
3 ADMINISTRATIVE AND JUDICIAL AUTHORITY. THAT'S ONE THING.

4 THE COURT: HAS THAT LAWSUIT BEEN RESOLVED?

5 DEFENDANT FALTAS: NO.

6 THE COURT: UNTIL IT'S RESOLVED I HAVE TO FOLLOW HER
7 ORDERS.

8 DEFENDANT FALTAS: I UNDERSTAND. I UNDERSTAND.

9 THE COURT: ALL RIGHT.

10 DEFENDANT FALTAS: I JUST WANT TO PUT IT ON THE RECORD.
11 THE OTHER THING IS THAT I DO NOT RECOGNIZE MR. LUPTON AS MY LAWYER. I
12 DO NOT WANT HIM, I DO NOT TRUST HIM. HE IS FORCED ON ME AND THE LAST
13 TIME I WAS BEFORE JUDGE BARBER I REMINDED HIM THAT THE U.S. SUPREME
14 COURT IN FERETTA V. CALIFORNIA SAID THAT THE ONLY TRIBUNAL IN ANGLO-
15 AMERICAN JURISPRUDENCE THAT FORCED A LAWYER ON A DEFENDANT WAS
16 THE (INAUDIBLE) CHAMBER. THE (INAUDIBLE) CHAMBER, YOUR HONOR,
17 (INAUDIBLE).

18 THE COURT: I HAVE NOTED ALL OF THAT FOR THE RECORD.

19 DEFENDANT FALTAS: I ALSO WANT - OKAY, SORRY.

20 THE COURT: DR. FALTAS.

21 DEFENDANT FALTAS: ALL RIGHT.

22 THE COURT: LET ME DO THIS. DO YOU HAVE OTHER POINTS YOU
23 WISH TO NOTE FOR THE RECORD?

24 DEFENDANT FALTAS: YES, YOUR HONOR.

25 THE COURT: DO YOU HAVE THEM IN WRITING?

1 **DEFENDANT FALTAS:** YES, YOUR HONOR.

2 **THE COURT:** WHY DON'T YOU HAND THEM TO ME IN WRITING
3 AND I'LL ATTACH THEM TO THE RECORD AND THAT WAY WE WON'T MISS ANY
4 OF THEM.

5 **DEFENDANT FALTAS:** ALL RIGHT. VERY GOOD.

6 **THE COURT:** ALL RIGHT.

7 **DEFENDANT FALTAS:** THANK YOU, YOUR HONOR.

8 **THE COURT:** YES, MA'AM. WE ARE HERE TODAY UNDER MY
9 ORDER FOR SCHEDULING OF A HEARING TO DETERMINE ALL CASES INVOLVING
10 DR. FASTAS PENDING BEFORE THIS COURT. I HAVE RECEIVED FROM THE CITY
11 ATTORNEY I WOULD ASSUME A SPREAD SHEET THAT INDICATES CASES WITH DR.
12 FALTAS AS A DEFENDANT AND CASES WITH DR. FALTAS AS A VICTIM. THE
13 CASES IN WHICH DR. FALTAS IS A DEFENDANT ARE TICKET NUMBER 201310,
14 UNLAWFUL ACTS, FIRST OFFENSE, OFFICER M. SIMS. TICKET NUMBER 37025FK,
15 TRESPASSING, OFFICER J. ASHMORE. TICKET NUMBER 38803FK, DISORDERLY
16 CONDUCT, OFFICER J. ASHMORE. TICKET L-066954, TRESPASSING, D. STEELE,
17 WHO IS A VICTIM, ALLEGED VICTIM. AND TICKET NUMBER L-066971, SIMPLE
18 ASSAULT, D. STEELE IS THE VICTIM. THE CASES IN WHICH DR. FALTAS IS LISTED
19 AS AN ALLEGED VICTIM ARE LISTED AS TICKET 2012C4021600269, DISORDERLY
20 CONDUCT. DEFENDANT ANTHONY PRESLEY. TICKET NUMBER 2012C4021600270,
21 HARASSMENT IN THE FIRST DEGREE, ANTHONY PRESLEY. TICKET
22 2012C4021600271, TRESPASSING, ANTHONY PRESLEY. TODAY WHAT I'D LIKE TO
23 DO IS ADMINISTRATIVELY GO THROUGH WHICH CASES, FIRST OF ALL, THAT THE
24 CITY INTENDS TO GO FORWARD ON AND THEN MAKE ANY DETERMINATIONS
25 THAT ARE NECESSARY ON ANY THE CITY IS NOT GOING TO PROSECUTE.

1 **DEFENDANT FALTAS:** MAY I SAY, YOUR HONOR –

2 **THE COURT:** JUST A MOMENT. LET ME TELL YOU WHAT I'M GOING
3 TO DO AND THEN YOU WILL BE ABLE TO SPEAK, DR. FALTAS.

4 **DEFENDANT FALTAS:** THANK YOU, YOUR HONOR.

5 **THE COURT:** SECONDLY, I WOULD LIKE TO THEN AFTER WE HAVE
6 REACHED ANY CONCLUSION, IF POSSIBLE, ON THOSE CHARGES TO THEN GO
7 THROUGH THE CHARGES THAT ARE REMAINING AND SEE WHAT WE CAN DO IN
8 TERMS OF SCHEDULING THEM AND MAKING SURE ALL DISCOVERY IS COMPLIED
9 WITH SO THAT THE CASES WILL BE ABLE TO MOVE IN AN ORDERLY FASHION.
10 NOW, DR. FALTAS, DID YOU HAVE SOMETHING TO SAY ON THAT POINT?

11 **DEFENDANT FALTAS:** YES, YOUR HONOR. I APOLOGIZE THAT I
12 SAT BECAUSE I WAS SO OUT OF BREATH I WANTED TO TAKE YOUR HONOR –

13 **THE COURT:** NOT A PROBLEM.

14 **DEFENDANT FALTAS:** AND MAY I HAVE YOUR HONOR'S
15 PERMISSION THAT ANY TIME I'M OUT (INAUDIBLE) OR MY KNEE THE PAIN GETS
16 TOO –

17 **THE COURT:** ABSOLUTELY.

18 **DEFENDANT FALTAS:** THANK YOU. ALL RIGHT. THE CASES
19 WHERE I'M THE ALLEGED VICTIM ARE NOT COMPLETE. THERE IS A CASE FOR
20 DISORDERLY CONDUCT WHERE I AM THE ALLEGED VICTIM AND THE
21 DEFENDANT IS THERESA FELICIA INGRAM JACKSON. THERE IS A CASE WHERE
22 I'M THE ALLEGED VICTIM FOR ASSAULT AND THE DEFENDANT IS LARRY WAYNE
23 MASON. THERE IS A CASE WHERE I'M THE ALLEGED VICTIM FOR DISORDERLY
24 CONDUCT AND FRANKLY I THINK IT SHOULD BE TAKEN MORE SERIOUSLY THAN
25 THAT BECAUSE I WAS THREATENED TO BE RAPED AND THE MAN STOOD IN THE

1 UPON THE COURT AND WE ARE GOING FORWARD.

2 MR. LUPTON: THANK YOU, YOUR HONOR. NEXT, THE COURT HAD
3 PREVIOUSLY HEARD ON A SEPARATE DATE MOTIONS TO PRODUCE
4 IMPEACHMENT EVIDENCE. I WOULD ASK THAT THAT BE INCORPORATED. THE
5 COURT -

6 THE COURT: LET ME DO THIS IF I MAY. ARE THERE ANY THINGS
7 THAT WERE PREVIOUSLY RAISED THAT Y'ALL NOW AGREE UPON THAT YOU
8 DIDN'T DO WE CAN NARROW THIS AND THEN LET'S TALK ABOUT ANYTHING
9 YOU DON'T AGREE ON.

10 MR. LUPTON: WE HAVE AGREED THIS MORNING TO LIMIT THE
11 TRIAL OF THIS CASE TO THE FACTS THAT OCCURRED ON THE DATE OF THE
12 OFFENSE, ON THAT JULY DATE.

13 THE COURT: OKAY. SO THE THINGS THAT REMAIN IN
14 DISAGREEMENT ARE THE MATTERS WE PREVIOUSLY HEARD WHEN WE SET
15 ASIDE THE DAY OR WHATEVER IT WAS TO HAVE PRE-TRIAL MOTIONS
16 INCLUDING ANY INVESTIGATIVE FILE FROM INTERNAL AFFAIRS REGARDING THE
17 OFFICER PRESENTING THE CASE.

18 MR. LUPTON: YES, YOUR HONOR.

19 THE COURT: IS THERE ANY NEW OR AFTER-ACQUIRED EVIDENCE
20 THAT WAS NOT ARGUED AT THAT TIME?

21 MR. LUPTON: NO, YOUR HONOR. YOU SAID YOU WANTED TO PUT
22 IT ALL ON THE RECORD TODAY.

23 THE COURT: ABSOLUTELY. AND I WILL INCORPORATE THE
24 ARGUMENTS YOU PREVIOUSLY MADE AND UNLESS THERE IS A NECESSITY OF
25 ADDITIONAL ARGUMENT FROM THE CITY I WILL INCORPORATE THE RULINGS

1 THERE TO AS WELL.

2 **MR. FERNANDEZ:** ALL RIGHT, YOUR HONOR. REGARDING WHAT
3 WE AGREED TO I'M NOT SURE I AGREED EXACTLY TO THAT. I AGREE THAT -
4 WHAT I WAS SUGGESTING IS THAT WE LIMIT THE DEFENDANT'S BEHAVIOR, THE
5 ALLEGATIONS OF DISTURBING OR HOWEVR YOU WANT TO CALL IT, THE
6 NEIGHBORS.

7 **MR. LUPTON:** YOUR HONOR, I APOLOGIZE. I DID MEAN TO
8 MISSPEAK. I AGREE THAT THEY ARE GOING TO PUT INTO EVIDENCE THE
9 ALLEGED NOTICES, THE 404 KIND IS WHAT WE AGREED TO.

10 **MR. FERNANDEZ:** THAT'S CORRECT. THAT'S MY UNDERSTANDING
11 AS WELL.

12 **MR. LUPTON:** OKAY. THAT WAS WHAT I MEANT WHEN I SAID
13 THAT. I APOLOGIZE FOR NOT BEING CLEAR. ALSO, THE OBJECTION TO STRIKING
14 A SECOND JURY FROM THE SAME JURY POOL, I MADE A SIMILAR ARGUMENT THE
15 FIRST TRESPASS TRIAL I BELIEVE THAT STRIKING A SECOND JURY FROM THE
16 SAME POOL WHERE THE JURY THAT SITS ON THE CASE TOMORROW WILL HAVE
17 KNOWLEDGE THAT SHE WAS ARRESTED AND TRIED FOR A CRIMINAL VIOLATION
18 THE PREVIOUS DAY TAINTS THE JURY. THEY ARE AWARE OF THAT ACTION.

19 **THE COURT:** I WILL, OF COURSE, AS I PREVIOUSLY DID, REMAIN
20 CONSISTENT AND PROCEED IN SPITE OF THAT OBJECTION, IT BEING OVERRULED.
21 I WILL, OF COURSE, INSTRUCT THE JURY AS I DO EVERY JURY WITH THE
22 PRESUMPTION OF INNOCENCE. I WILL ALSO ALLOW COUNSEL TO THE EXTENT
23 THAT HE WISHES TO PROPOSE ADDITIONAL CURATIVE CHARGES, CONSIDER
24 THOSE AND MAKE ANY RULING UPON THOSE AND, IF WE AGREE TO GIVE THEM,
25 GIVE THOSE TO ADDRESS THIS ISSUE TO THE EXTENT COUNSEL BELIEVES THAT

1 A CHARGE IS NECESSARY. YOU DON'T HAVE TO DO THAT TODAY, OF COURSE.
2 THEY ARE NOT COMING IN UNTIL TOMORROW. HOWEVER, I WILL GIVE YOU THE
3 OPPORTUNITY TO DRAFT A CURATIVE CHARGE IF YOU DEEM IT APPROPRIATE TO
4 SUGGEST ONE.

5 MR. LUPTON: THANK YOU. I DON'T THINK ANY CURATIVE
6 CHARGE CAN CURE THAT PREJUDICE BUT I WILL CONSIDER THAT OVERNIGHT.
7 THANK YOU, YOUR HONOR.

8 THE COURT: NOW IF YOU DON'T PROPOSE ONE, YOU'RE GOING TO
9 WAIVE YOUR RIGHT TO HAVE PROPOSED ONE.

10 MR. LUPTON: I UNDERSTAND THAT, YOUR HONOR.

11 THE COURT: IF YOU WANT TO STAND ON A THRESHOLD ISSUE
12 THAT'S FINE BUT I AM EXPRESSLY GIVING YOU THE OPPORTUNITY TO DRAFT ONE
13 AND IT'S YOUR DECISION AND YOUR INCLINATION AS TO WHETHER TO DO SO OR
14 NOT.

15 MR. LUPTON: THANK YOU, YOUR HONOR. AND I BELIEVE I HAVE
16 TO MAKE THIS MOTION UNDER GENTRY. I MOVE TO QUASH THE TRESPASS
17 INDICTMENT AS WELL AS UNDER RAMSEY - I SAY INDICTMENT. I APOLOGIZE.
18 TICKET. FIRST, IT WAS WRITTEN UNDER THE WRONG CODE SECTION. IT WAS
19 WRITTEN UNDER 600 RATHER THAN 620. THAT IS 16-11-600 INSTEAD OF 16-11-620.
20 AND ALSO TO THE EXTENT THAT THE CITY IS RELYING UPON ANY EVIDENCE
21 THAT OCCURRED OUTSIDE THE PRESENCE OF THE OFFICER TO MAKE THE
22 ARREST THEN IT WOULD BE BARRED BY RAMSEY.

23 THE COURT: MR. FERNANDEZ.

24 MR. FERNANDEZ: YES, YOUR HONOR. TWO ISSUES THERE SO I'LL
25 GO IN ORDER. MR. LUPTON IS CORRECT, IF YOUR HONOR HAS A COPY OF THE

1 TICKETS OR I CAN GIVE YOU THESE –

2 **THE COURT:** I DO HAVE A COPY.

3 **MR. FERNANDEZ:** THE VIOLATION IS LISTED AS TRESPASS AFTER
4 NOTICE. THAT WOULD BE CORRECT. THE VIOLATION SECTION NUMBER IS 16-11-
5 600, THAT'S INCORRECT. THAT ACTUALLY DOESN'T EXIST, THERE IS NO 600. THE
6 FIRST STATUTE I BELIEVE IS 620 IN THAT SUBSECTION HAVING JUST PULLED IT
7 UP ON THE WEBSITE AT LEAST. ANYWAYS, I AM FAMILIAR WITH THE CASE LAW.
8 I'VE COME ACROSS THIS ISSUE BEFORE. CASE LAW ALLOWS THE PROSECUTION
9 TO AMEND THE CHARGES UP UNTIL ANY POINT DURING THE TRIAL UNTIL THE
10 JURY RECEIVES THE CASE TO DELIBERATE WITH, ASSUMING THAT THE
11 MATERIAL ELEMENTS ARE NOT DIFFERENT. AND IN THIS CASE THE ELEMENTS
12 OF THE CRIME WOULD BE EXACTLY THE SAME WHETHER OR NOT IT'S TRESPASS
13 UNDER WHATEVER 600 EXISTS OR NOT OR 620. SO TO THAT EXTENT THE CASE
14 LAW DOES PERMIT THE PROSECUTION TO AMEND THE –

15 **THE COURT:** NUMBER ONE, THE FIRST QUESTION. WHEN DID 600
16 GO AWAY?

17 **MR. FERNANDEZ:** I DON'T KNOW. I PULLED IT UP THIS MORNING
18 AFTER MR. LUPTON TOLD ME IT'S UNDER 600 AND IT'S NOT SHOWING UP THE
19 ONLINE DATABASE.

20 **THE COURT:** THERE WAS A POINT IN TIME WHEN 600 EXISTED AS A
21 TRESPASS CHARGE INVOLVING LANDS WHERE THERE ARE HORSES, MULES,
22 COWS OR HOGS, AND IT'S NOT A CURRENT STATUTE BUT IT DOES NOT MEAN
23 THAT IT WAS OR WAS NOT AT THE TIME THAT THIS CHARGE WAS WRITTEN.

24 **MR. LUPTON:** IT WAS A STATUTE AS OF WHEN I FIRST DID THE
25 RESEARCH AND PULLED UP THE STATUTES. I'M NOT SURE WHEN IT WAS – I

1 DON'T HAVE INTERNET ACCESS SO I CAN'T GO LOOK.

2 **THE COURT:** LET'S ASSUME FOR ARGUMENT THAT IT WAS A
3 STATUTE AT THE TIME THIS CHARGE WAS WRITTEN. MR. FERNANDEZ, WHAT IS
4 YOUR ARGUMENT ON IF THERE ARE TWO STATUTES THAT ARE BOTH POSSIBLE
5 TO BE CHARGED AND THE WRITTEN NUMBER IS FOR ONE THAT IS NOT WHAT'S
6 GOING FORWARD NOW, WHAT IS YOUR POSITION ON THAT?

7 **MR. FERNANDEZ:** MY POSITION IS AND THE CASE LAW SUPPORTS
8 THAT THE PROSECUTION IS ABLE TO AMEND THE CHARGE ASSUMING THE
9 MATERIAL ELEMENTS OF THE CHARGE REMAIN THE SAME. AND THE CASE LAW
10 TALKS ABOUT - NOT TRESPASS BUT IT TALKS ABOUT THE VARYING DEGREES OF
11 ASSAULTS OR ATTEMPTED MURDER, SLASH, MURDER. IT TALKS ABOUT THOSE
12 TYPE OF SITUATIONS WHERE THE ELEMENTS ARE THE SAME. WHAT WE ARE
13 TALKING ABOUT IS JUST THE LAW, YOU ARE ABLE TO AMEND MIDTRIAL, EVEN
14 UP UNTIL THE VERY END WHEN THE JURY RECEIVES THE CHARGE FROM THE
15 COURT.

16 **THE COURT:** ARE THE ELEMENTS THE SAME WITH 600 AND 620?

17 **MR. FERNANDEZ:** WELL, I WOULD ARGUE, YOUR HONOR, THAT
18 THERE WAS A SCRIVENER'S ERROR. I WOULD ARGUE THAT TRESPASS AFTER
19 NOTICE WAS WRITTEN ON THE TICKET AND HE CLEARLY MEANT TO CHARGE 620
20 BUT THAT 600 WAS WHAT THEY - I THINK THE OFFICERS HAVE CHEAT SHEETS
21 ON 'EM AND THAT JUST COULD HAVE POSSIBLY BEEN AN ERROR ON THEIR PART.

22 **THE COURT:** AND TO THE EXTENT THAT IT'S NECESSARY I WANT
23 YOU TO HAVE A COPY OF 600 SO YOU CAN SEE IT. MR. LUPTON, YOU GOT ANY
24 ARGUMENT?

25 **MR. LUPTON:** YOUR HONOR, I BELIEVE THAT IT IS INAPPROPRIATE

1 UNDER GENTRY TO AMEND WHERE THE ELEMNTS CHANGE OR THE PUNISHMENT
2 CHANGES. AND I HAVEN'T LOOKED CLOSELY AT THE FINE BUT IT GOES FROM
3 ONE HUNDRED TO TWO HUNDRED -- EXCUSE ME. ONE HUNDRED TO TWO
4 HUNDRED SO THE PUNISHMENT DOES CHANGE AND THE ELEMENTS CHANGE. SO
5 UNDER BOTH PRONGS OF GENTRY, CHANGE IN PUNISHMENT, INCREASE IN
6 PUNISHMENT, AND THE FACT THAT THE ELEMENTS HAVE CHANGED. IT GOES
7 FROM TRESPASS ON LANDS TO TRESPASS ON PREMISES. 600 CLEARLY
8 CONTEMPLATES OPEN LANDS WHEREAS 620 CONTEMPLATES WHAT WE HAVE
9 HERE.

10 THE COURT: ALL RIGHT. LET'S TALK ABOUT SCRIVENER'S ERROR.
11 IS WRITING THE WRONG STATUTE A SCRIVENER'S ERROR? IS THERE ANY CASE
12 LAW ON THAT?

13 MR. FERNANDEZ: I DON'T HAVE ANY CASE LAW ON ME, YOUR
14 HONOR. I DIDN'T ACTUALLY LOOK THAT UP BUT I HAVE INTERNET ACCESS, I
15 CERTIANLY COULD.

16 THE COURT: I THINK WE NEED TO SEND THE JURY AWAY AND
17 CONSIDER THIS ISSUE. THIS CASE -- I DON'T KNOW WHY THESE CASES ARE SO
18 HARD BUT THEY ARE NOVEL AND DIFFICULT ISSUES AND THEY SEEM TO COME
19 FROM BOTH SIDES. I HAVE MANY TIMES HELD THAT WHEN IT IS NOT THE
20 NOTICE OF THE CHARGE THAT ANYTHING ELSE IS A SCRIVENER'S ERROR. THAT
21 TENDS TO MAKE ME BELIEVE THAT THERE IS SOME REASON THAT THE NOTICE
22 OF THE CHARGE MATTERS. FURTHER COMPLICATING THIS IS BOTH OF THEM
23 HAVE TRESPASS AFTER NOTICE IN THE TITLE. ONE REQUIRES POSTING IN FOUR
24 PLACES, (INAUDIBLE) HOGS AND LANDS AND ALL KIND OF OTHER STUFF. ONE
25 REQUIRES COMING ON THE PREMISES. I THINK THEY HAVE DIFFERENT FINES. SO

1 THEN WE START GETTING INTO IF YOU LOOK AT THE NAME THAT WAS WRITTEN
2 IT DOES APPLY TO 600. 600 HAS CERTAIN ELEMENTS. 620 HAS DIFFERENT. DOES
3 THAT VIOLATE GENTRY? I'M GOING TO LET THEM GO. I'M GOING TO GIVE Y'ALL
4 A CHANCE TO LOOK AT THAT BECAUSE I DIDN'T SEE IT COMING SO I ASSUME
5 MR. FERNANDEZ DIDN'T. I'LL GIVE HIM AN ADEQUATE OPPORTUNITY TO
6 RESPOND AND WE'LL ADDRESS THAT AFTER LUNCH.

7 MR. FERNANDEZ: THANK YOU, YOUR HONOR.

8 MR. LUPTON: WHAT TIME?

9 (JURY IS DISMISSED FOR LUNCH)

10 THE COURT: ALL RIGHT. FOLKS, IT'S A LITTLE UNUSUAL TO HAVE
11 TO TAKE SIGNIFICANT ARGUMENT ON THE CHARGE BUT I THINK IT'S
12 APPROPRIATE IN THIS MATTER.

13 MR. FERNANDEZ: THANK YOU, YOUR HONOR. I APPRECIATE AND
14 I'M JUST GONNA DO SOME RESEARCH. I'LL PULL UP WEST LAW AND SEE IF
15 THERE'S ANYTHING.

16 THE COURT: CAN WE BE BACK AT 12:30? THE SPECIFIC ISSUES
17 THAT I WANT ADDRESSED ARE, ONE, CAN THE ACTUAL CHARGE ITSELF BE A
18 SCRIVENER'S ERROR, ANY CASE LAW ON THAT. AND, SECONDLY, ASSUMING
19 THAT THAT CAN BE AND ENOUGH NOTICE WAS GIVEN, ARE THE ELEMENTS
20 SIGNIFICANTLY DIFFERENT THAT IT CANNOT BE AMENDED WHETHER THAT BE
21 GENTRY AND ANY PRODIGY OR ANY OTHER APPLICABLE CASE LAW. I'LL HEAR
22 ANYTHING ELSE YOU'VE GOT TO ARGUE BUT THOSE ARE THE TWO MAIN
23 QUESTIONS I'VE GOT. SO CAN WE TRY TO DO IT AT 12:30 SO WE CAN HAVE AT
24 LEAST A FIFTEEN MINUTE HEADSTART ON THE JURY?

25 MR. FERNANDEZ: OH, YES. THAT SHOULD BE NO PROBLEM.

1 **THE COURT:** THANK YOU VERY MUCH.

2 **MR. FERNANDEZ:** THANK YOU, YOUR HONOR.

3 **MR. LUPTON:** THANK YOU, YOUR HONOR.

4 (LUNCHEON RECESS)

5 (CASE RESUMES)

6 **THE COURT:** ALL RIGHT. WE ARE BACK ON THE RECORD. PRIOR
7 TO LEAVING THE DEFENDANT MADE A MOTION TO DISMISS THE TICKET FOR
8 BEING WRITTEN UNDER SECTION 16-11-600 AND THE CHARGE THAT THE CITY
9 WANTS TO PROCEED UNDER IS 16-11-620. AT THAT TIME, WE GAVE AN HOUR AND
10 IT'S BEEN A LITTLE MORE THAN AN HOUR FOR THE CITY ATTORNEY TO GO TO
11 RETRIEVE AND THEN PROVIDE ANY CASE LAW HE SO CHOSE TO THE COURT IN
12 CONSIDERING THIS AND I ALSO WANTED TO HEAR ARGUMENT ON SEVERAL
13 ISSUES. THE CITY ATTORNEY HAS PROVIDED TO BOTH DEFENSE COUNSEL AND
14 TO THE COURT A MAY 25TH, 2011, ATTORNEY GENERAL'S OPINION REGARDING
15 COURTESY SUMMONS WHICH ADDRESSED MANY OF THE CASES THAT ADDRESS
16 BOTH TICKETS AND INDICTMENTS IN GENERAL SESSIONS COURT AND
17 AMENDMENTS AND NOL PROSSING THEREOF. MR. FERNANDEZ, HAPPY TO HEAR
18 FROM YOU.

19 **MR. FERNANDEZ:** YES, YOUR HONOR. THE ATTORNEY GENERAL
20 OPINION IS AS YOUR HONOR IS AWARE ABOUT TEN PAGES I THINK AND I CHOSE
21 THAT BECAUSE IT DOES COVER THE RELEVANT CASE LAW. I KNOW AN
22 ATTORNEY GENERAL OPINION IS NOT BINDING OR ANYTHING LIKE THAT BUT IT
23 DOES PROVIDE THE CASE LAW THAT WE WERE JUST TALKING ABOUT, GENTRY
24 BEING ONE OF THEM. AND THEN THERE'S A FEW OTHER CASES. EVEN THOUGH
25 IT'S A QUESTION ABOUT COURTESY SUMMONS THE OPINION DOES GO INTO

1 INDICTMENTS AND TICKETS. THE PRONG THAT I LEFT OUT - I STAND BY MY
2 PRIOR ARGUMENT THAT THE CHARGE CAN BE AMENDED ASSUMING THE TWO
3 THINGS -- ONE THAT THEY ARE SIMILAR, SIMILAR ELEMENTS AND THEN, TWO,
4 THAT THE PENALTIES ARE NOT STEEPER, NO STEEPER PENALTIES. THE THIRD
5 PRONG IS THAT - AND I DID NEGLECT TO SAY THIS - BUT THE DEFENDANT HAS
6 TO PROVE PREJUDICE, ALSO. SO IT IS A BURDEN ON THE DEFENDANT TO PROVE
7 THAT THEY ARE PREJUDICED BY AN AMENDMENT ASSUMING THE OTHER TWO
8 ARE ALSO SATISFIED. SO IN THE CASE AT HAND, I HAVE READ 600, I'M ALREADY
9 FAMILIAR WITH 620. 600, THEY ARE BOTH TRESPASSING. THEY ARE BOTH
10 TRESPASSING SO THE SAME BASIC PRINCIPLES APPLY. THE ONLY QUESTION IS
11 WHERE YOU ARE TRESPASSING, EITHER ON REAL PROPERTY OR ON PASTURE
12 LAND OR WHATEVER, HOWEVER THEY DEFINE IT. SO I WOULD ARGUE AS FAR AS
13 THE TRESPASSES ARE CONCERNED, IT'S STILL TRESPASSING, IT'S THE SAME
14 THING, SAME BEHAVIOR SO TO SPEAK. THE PENALTIES ARE DIFFERENT BUT NOT
15 SIGNIFICANTLY. AND I WOULD NOTE THAT IT'S ARGUABLY WORSE FOR 600
16 BECAUSE THE PENALTIES UNDER 600 ALTHOUGH THE FINE AMOUNT IS ONE
17 HUNDRED DOLLARS CHEAPER, IT DOES CALL FOR IMPRISONMENT UP TO THIRTY
18 DAYS HARD LABOR. 620 CALLS FOR A TWO HUNDRED DOLLAR FINE BUT ONLY
19 IMPRISONMENT FOR UP TO THIRTY DAYS, NOT THE HARD LABOR ELEMENT
20 ADDED TO IT. SO ARGUABLY 600 HAS STEEPER PENALTIES FOR SOMEONE WERE
21 THEY TO BE GIVEN THE MAXIMUM POSSIBLE FINE. ON TOP OF THAT I DON'T
22 THINK PREJUDICE IS AN ISSUE. EVERYONE WAS AWARE OF WHAT THE
23 ALLEGATIONS WERE. WE'VE ALREADY TRIED A CASE VERY SIMILAR TO THIS.
24 ALL PEOPLE WERE PRESENT, COUNSEL WAS PRESENT, THE DEFENDANT HERSELF
25 WAS PRESENT AT THE OTHER ONE, SO THERE IS NO PREJUDICE TO GOING

1 FORWARD WITH WHAT WE ALL UNDERSTOOD THE FACTS TO BE. AND I WOULD
2 NOTE FOR JUDICIAL ECONOMY PURPOSES I WOULD JUST POINT OUT THAT WE
3 ARE UNDER A SUPREME COURT ORDER TO GET THESE CASES DONE. IN LIGHT OF
4 THAT, A DISMISSAL HERE WOULD NECESSARILY BE WITHOUT PREJUDICE SO IF
5 THE CITY WERE INCLINED TO CONTINUE TO PURSUE THE CHARGES IT COULD
6 AND ALL THAT DOES IS DELAY THE INEVITABLE WHICH IS A TRIAL UNDER 620. I
7 FLOATED THAT BY COUNSEL. HE STILL INDICATED HE WAS INCLINED TO
8 PRESERVE HIS CLIENT'S BEST ARGUMENT. IT'S UNDERSTANDABLE, RESPECT IT,
9 BUT AT THE END OF THE DAY I'M NOT SURE WE ACCOMPLISH MUCH BY DOING
10 THIS. I THINK I SUCCEED ON THE CASE LAW AND CERTAINLY WHAT I
11 PRESENTED BEFORE BUT ALSO I THINK THERE'S OTHER VALID REASONS TO GO
12 FORWARD WITH THIS AND JUST FINISH IT.

13 THE COURT: YES, SIR, MR. LUPTON, IN RESPONSE.

14 MR. LUPTON: YOUR HONOR, OBVIOUSLY THE ATTORNEY
15 GENERAL'S OPINION IS NOT PRECEDENT IN ANY WAY. THE CASES THAT ARE
16 CITED THEREIN I WOULD NOTE THAT MOST OF THEM ARE - PREDATE GENTRY SO
17 TO THE EXTENT THAT THEY DISCUSS AMENDMENTS I WOULD ARGUE THAT
18 AMENDMENTS - THE AMENDMENT RULES HAVE CHANGED WITH GENTRY SO I
19 THINK THERE ARE SOME CHANGES WITH THAT.

20 THE COURT: IF YOU BELIEVE THERE TO BE CHANGES, PLEASE
21 ARTICULATE WHAT THOSE CHANGES ARE.

22 MR. LUPTON: AND THAT'S WHAT I'M - POST GENTRY IN ORDER
23 FOR THERE TO BE A CHANGE IT IS NOT THAT THE CHARGES ARE SIMILAR. IT'S
24 THAT THERE IS NO MATERIAL CHANGE IN THE INDICTMENT OR IN THE
25 CHARGING DOCUMENT. I THINK THAT CHANGING FROM ONE STATUTE TO

1 ANOTHER, FROM ONE CRIME TO A DIFFERENT CRIME, EVEN IF A SIMILAR CRIME,
2 IS A MATERIAL CHANGE. IF YOU LOOK AT THE CASE LAW POST – IF YOU LOOK
3 AT THE CASE LAW, THE – AND I’M LOOKING FOR THE SPECIFIC CITE, I
4 APOLOGIZE. STATE V. GUTHERIE – THIS IS PRE-GENTRY BUT IT STILL DISCUSSES
5 THE ADDING AN ELEMENT EQUALS A MATERIAL CHANGE. IN THAT CASE YOU
6 HAD A BURGLARY TRIAL. IT WAS CHANGED FROM ONE TYPE OF BURGLARY TO
7 ANOTHER ADDING A DIFFERENT ELEMENT AS TO BURGLARY BUT THEY WERE
8 SIMILAR CHARGES. IT WAS HELD TO BE AN IMPROPER MATERIAL CHANGE.
9 ANOTHER CASE – I BELIEVE IT’S CUTNER DISCUSSES CHANGING PROXIMITY TO A
10 CHURCH, DELETING CHURCH, ADDING PROXIMITY TO A SCHOOL. AGAIN,
11 SIMILAR CHARGES, STILL UNDER THE SAME STATUTE, THE PROXIMITY STATUTE,
12 DEEMED TO BE AN IMPROPER CHANGE. THE OPINION DOES LIST CASES THAT
13 STATE PROPER CHANGES, CHANGING TO ADD A PRIOR CONVICTION MAKING IT A
14 D.U.I., SECOND, INSTEAD OF A D.U.I, FIRST, FOR EXAMPLE. A SCRIVENER’S
15 ERROR IN THE BODY OF A WARRANT OR INDICTMENT TAKING OUT SURPLUSAGE,
16 TIME FRAME WHERE TIME FRAME IS NOT MATERIAL. THIS IS NOT WHAT WE
17 HAVE IN THIS CASE. YOU’VE GOT A MATERIAL CHANGE, YOU ARE ADDING –
18 YOU ARE TAKING AWAY AN ELEMENT OF LANDS, ADDING ELEMENT PREMISES.
19 YOU ARE CHANGING THE TYPE OF NOTICE THAT HAS TO BE GIVEN FROM ONE
20 TYPE OF NOTICE TO ANOTHER TYPE OF NOTICE. ADDITIONALLY, THE
21 PUNISHMENT IS CHANGED. THAT’S THE SECOND PRONG. THE STATE HAS TO
22 SHOW THAT IT IS NOT A MATERIAL CHANGE. IT IS A MATERIAL CHANGE. THE
23 STATE HAS TO SHOW THAT THERE’S NO CHANGE IN PENALTY OR AT LEAST NO
24 INCREASE IN PENALTY. THERE IS AN INCREASE IN PENALTY IN THIS CASE. IT
25 GOES FROM A HUNDRED DOLLAR FINE TO A TWO HUNDRED DOLLAR FINE. NOW

1 THE CITY CAN ARGUE THAT THAT'S NOT THAT BIG OF A DEAL CHANGE, IT'S NOT
2 THAT BIG OF A CHANGE BUT IT'S STILL AN INCREASE. AND CASE LAW DOESN'T
3 MAKE AN EXCEPTION FOR WE ALLOW A LITTLE BIT OF INCREASE. IT'S THERE
4 CANNOT BE AN INCREASE. THE PREJUDICE, I WOULD ARGUE IT IS ON THE CITY
5 TO PROVE PREJUDICE SINCE THEY ARE THE MOVING PARTY BUT EVEN IF IT'S ON
6 THE DEFENDANT I THINK WE ARE PREJUDICED BECAUSE IT CHANGES THE
7 ELEMENTS WE HAVE TO DEFEND AGAINST, SUBSTANTIALLY CHANGES THEM. IT
8 CHANGES FROM THE NOTICE REQUIREMENTS AND IT CHANGES WHERE SHE WAS
9 OR WAS NOT PERMITTED TO BE UNDER THE CRIMINAL STATUTE. BUT
10 REGARDLESS, EVEN IF THE COURT FINDS THAT WE CANNOT SHOW PREJUDICE,
11 ALL THREE ELEMENTS HAVE TO BE MET -- NO CHANGE, NO SUBSTANTIAL
12 CHANGE WHICH THIS IS A MATERIAL CHANGE, NO INCREASED PENALTY. THERE
13 IS AND THE PREJUICE. ALL THREE HAVE TO BE PRESENT. AND AS FAR AS THE
14 ARGUING ABOUT WHETHER OR NOT THIS IS SCRIVENER'S ERROR, YOUR HONOR, I
15 WOULD NOTE THAT THE CASE LAW THAT TALKS ABOUT SCRIVENER'S ERROR
16 REFERS TO WARRANTS, EITHER COURTESY SUMMONS WARRANTS OR REGULAR
17 WARRANTS OR INDICTMENTS WHICH STATE THE ELEMENTS OF THE OFFENSE.
18 THE CASE LAW TALKS ABOUT THE ELEMENTS AND WHETHER OR NOT THE
19 ELEMENTS STATE SUBSTANTIALLY IN THE TERMS OF THE STATUTE OR COMMON
20 LAW. BECAUSE THIS IS A BLUE TICKET, A UNIFORM TRAFFIC TICKET, IT DOESN'T
21 STATE ANY ELEMENTS. ALL IT GIVES IS THE STATUTE. THAT'S HOW WE GET
22 NOTICE. SO YOU CAN'T HAVE SCRIVENER'S ERROR AS TO THE ONLY THING
23 THAT GIVES THE NOTICE. IT WOULD BE DIFFERENT THAN A TYPO ON A STREET
24 ADDRESS OR SOMETHING LIKE THAT.

25 THE COURT: MAY I HAVE THE BOOK BACK, PLEASE. ANYTHING

1 FURTHER, MR. LUPTON?

2 MR. LUPTON: YOUR HONOR, ONE LAST THING. I RECOGNIZE THAT
3 WE ARE UNDER A SUPREME COURT ORDER BUT I DO BELIEVE THAT WE STILL
4 HAVE TO DO IT CORRECTLY AND I KNOW THAT THAT'S THE COURT'S DESIRE AS
5 WELL. YOUR HONOR, MAY WE APPROACH?

6 (BENCH CONFERENCE)

7 THE COURT: WELL, IF THIS HAD BEEN A MONTH AGO MY ANSWER
8 WOULD HAVE BEEN SIMPLE. THEY'VE GOT THE RIGHT TO AMEND IT UP TO
9 TRIAL AND YOU WOULD HAVE HAD PLENTY OF NOTICE ALTHOUGH I DO BELIEVE
10 THAT THIS IS A TECHNICAL ARGUMENT THAT CLEARLY BECAUSE OF THE
11 DISCOVERY THAT WAS PROVIDED BY THE CITY THE DEFENDANT KNEW THAT
12 THEY WERE TALKING ABOUT TRESPASS ON PREMISES. NONETHELESS, BOTH OF
13 THESE STATUTES – ONE WHICH NO LONGER EXISTS – COULD BE DESCRIBED AS
14 TRESPASSING AFTER NOTICE. OR PROPERLY DESCRIBED AS TRESPASS AFTER
15 NOTICE. SO THOSE WORDS ALONE DON'T TELL YOU WHAT ELEMENTS YOU
16 FACE. 16-11-600 IS THE ONE INVOLVING PASTURES AND LANDS AND A CERTAIN
17 LEVEL OF FINES, ET CETERA. 620 IS ANOTHER ONE. I KNOW WE ARE TALKNG
18 ABOUT JUDICIAL ECONOMY BECAUSE WE'VE GOT THE JURY HERE. NOTHING IS
19 MORE JUDICIALLY UNECONOMICAL AS TRYING A CASE AND COMING BACK AND
20 TRYING IT AGAIN. I DON'T BELIEVE THAT ANY ENTRY OF A DECISION WOULD
21 PRECLUDE THE CITY FROM REBRINGING THE TICKET. IT IS NOTED THAT THE
22 PROSECUTOR HAS THE SOLE AUTHORITY TO NOL PROS A CASE RIGHT UP UNTIL
23 THE JURY IS SWORN. WE HAVE IMPANELED AND SWORN – WE HAVE IMPANELED
24 A JURY, WE'VE NOT SWORN ONE. SO WHATEVER I RULE DOESN'T GET RID OF
25 THIS. HOWEVER, I DO BELIEVE THAT THIS DOES NOT FALL UNDER SCRIVENER'S

1 ERROR AS IT SPECIFICALLY STATES A STATUTE AND THAT THE EXPLANATION IN
2 PLAIN WORDS OF THE STATUTE DO NOT GIVE ANY NOTICE THAT IT DOESN'T
3 MEAN THE FIRST STATUTE, IT MEANS THE SECOND. AND BECAUSE OF THOSE
4 THINGS IN TANDEM I AM GOING TO GRANT THE MOTION TO DISMISS THE TICKET
5 AS WRITTEN. AND I WILL RECORD IT AND LISTEN TO WHATEVER IS SAID AFTER
6 THE RECORDING BUT - I JUST THINK SITTING HERE AT THIS MOMENT IT CREATES
7 MORE PROBLEMS TO GO FORWARD THAN NOT AND THE TICKET WAS WRITTEN
8 ON JULY IN 2010 AND RIGHT UP UNTIL THIS MOMENT IT'S NEVER BEEN
9 AMENDED. COULD HAVE BEEN AND HADN'T. SO THAT'S WHERE I AM. SO WE
10 ARE DONE FOR THE DAY.

11 MR. LUPTON: THANK YOU, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13

14 (END OF REQUESTED TRANSDRIPT OF RECORD)

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1 THE COURT: THE PRIOR TRIALS, WE ARE GOING TO REFER TO
2 THOSE AS PREVIOUSLY UNDER OATH OR PRIOR HEARINGS. WE ARE NOT GOING
3 TO TALK ABOUT TRIALS OR IN ANY WAY INSINUATE WHAT THEY ARE. I
4 UNDERSTAND THAT YOU HAVE REITERATED TO YOUR OPPOSITION TO TWO
5 JURIES FROM THE SAME POOL. I HAVE OVERRULED THAT. AGAIN, I HAVE
6 ADVISED YOU PREVIOUSLY AND WILL INQUIRE NOW DO YOU HAVE ANY TYPE
7 OF CURATIVE CHARGE THAT YOU WISH TO HAVE READ?

8 DEFENDANT FALTAS: I DON'T WANT A JURY TRIAL.

9 MR. LUPTON: YOUR HONOR, I DON'T BELIEVE IT CAN BE CURED. I
10 DON'T THINK YOU CAN UNRING THE BELL. HOWEVER, MY CLIENT HAS
11 INFORMED ME THAT SHE DOES NOT WANT TO BE TRIED BY A JURY, THAT SHE
12 WANTS TO GO FORWARD AS A BENCH TRIAL.

13 DEFENDANT FALTAS: NOW IS IT POSSIBLE IF WE GO FORWARD TO
14 A BENCH –

15 THE COURT: MR. FERNANDEZ?

16 MR. FERNANDEZ: COULD I HAVE A MOMENT.

17 MR. LUPTON: I BEG THE COURT'S INDULGENCE.

18 MR. FERNANDEZ: CAN I HAVE A MOMENT TO DISCUSS –

19 THE COURT: PLEASE.

20 (PAUSE)

21 THE COURT: YES, SIR, MR. FERNANDEZ.

22 MR. FERNANDEZ: AFTER HAVING DISCUSSED THE MATTER WITH
23 THE VICTIM, I THINK SHE DOES HAVE SOME INPUT IN HOW THE CASE PROCEEDS.
24 WE WILL BE FINE WITH PROCEEDING WITH A BENCH TRIAL.

25 THE COURT: ALL RIGHT.

1 MR. LUPTON: YOUR HONOR, MY CLIENT HAS ASKED - AND I
2 UNDERSTAND THE COURT IS ALREADY AWARE OF MOST OF - OF ALL OF THE
3 BACKGROUND THROUGH PRIOR TRIALS, NOT THROUGH EX PARTE OR OTHER
4 COMMUNICATIONS BUT THROUGH PRIOR TRIALS. AND WHILE I UNDERSTAND
5 THAT THE COURT WILL DECIDE THE CASE ON THE FACTS OF THIS CASE THAT
6 ARE PRESENTED IN THIS COURTROOM TODAY, NOT BASED ON KNOWLEDGE YOU
7 HAVE OUTSIDE, MY CLIENT HAS ASKED THAT SINCE IT IS GOING TO BE TRIED BY
8 THE COURT WITH THE DISCRETION AND UNDERSTANDING AND ABILITY TO SORT
9 THROUGH WHAT IS RELEVANT AND NOT RELEVANT IF SHE WOULD BE
10 PERMITTED IN A BENCH TRIAL TO GO INTO THINGS THAT SHE BELIEVES IS
11 RELEVANT AS TO MOTIVE AND BIAS.

12 THE COURT: I WILL ALLOW GREATER LATITUDE IN TESTIFYING IF
13 IT IS A BENCH TRIAL AS OPPOSED TO A JURY TRIAL. HOWEVER, I WILL LIMIT
14 ANY OF MY FINDINGS TO WHAT I BELIEVE TO BE RELEVANT INFORMATION. SO
15 JUST BECAUSE IT'S SAID HERE DOESN'T MEAN THAT THAT'S WHAT I'M GOING TO
16 RELY UPON, BUT I WILL ALLOW MORE THINGS TO BE SAID, CORRECT.

17 MR. LUPTON: ALL RIGHT. AND I UNDERSTAND THAT THAT IS NOT
18 IN ANY WAY COERCIVE OF TRYING TO GET HER TO WAIVE HER RIGHT TO A JURY
19 TRIAL BUT JUST IN TERMS OF THE COURT HAS MORE DISCRETION.

20 THE COURT: THAT IS HOW WE WILL PROCEED BECAUSE THE
21 COURT DOES HAVE MORE DISCRETION AND IN A BENCH TRIAL I'M NOT AS
22 STRICT ON THE EVIDENTIARY RULES BECAUSE I CAN SORT THROUGH WHAT IS
23 ADMISSIBLE AND WHAT IS NOT. NOW WITH THAT BEING SAID, WE'VE GOT A
24 JURY RIGHT HERE AND WE ARE HAPPY TO HAVE HER EXERCISE HER RIGHT TO A
25 JURY TRIAL AND ARE READY TO BEGIN.

1 MR. LUPTON: YOUR HONOR. I APOLOGIZE.

2 THE COURT: NO PROBLEM. SO DOES SHE WANT THE JURY TRIAL
3 OR NOT?

4 DEFENDANT FALTAS: WELL, I CAN'T HAVE A JURY TRIAL UNDER
5 THIS LIMINE THING AND BE, YOU KNOW, IN CONTEMPT. YOU SAID SOMETHING
6 ABOUT CAN'T UNRING THE BELL. I AGREE WITH THAT. BESIDES IT WILL TAKE
7 MORE TIME AND THE ISSUE OF MY SCREAMING (INAUDIBLE) KNEES I DON'T
8 WANT TO BE REMOVED.

9 MR. LUPTON: IT'S YOUR DECISION. I'VE GIVEN YOU MY ADVICE.

10 DEFENDANT FALTAS: IT'S MY DECISION UNDER DURESS BUT
11 THAT'S THE LESSER OF THE TWO EVILS. IN ADDITION I (INAUDIBLE) MY ANDERS
12 BRIEF AND I WANT YOU TO PLEASE PUT IT ON THE RECORD THAT THE
13 (INAUDIBLE). COULD I GIVE IT TO YOU?

14 MR. FERNANDEZ: I BEG THE COURT'S INDULGENCE.

15 MR. LUPTON: YOUR HONOR, MY UNDERSTANDING FROM MY
16 CONVERSATION WITH MY CLIENT RIGHT NOW IS THAT AT THIS TIME SHE WOULD
17 LIKE TO WAIVE JURY TRIAL, PROCEED WITH A BENCH TRIAL. SHE HAS ASKED
18 ME ALSO TO SUBMIT TO THE COURT THE ANDERS BRIEF WHICH I BELIEVE YOU
19 HAVE ALREADY HAD E-MAILED TO YOU BUT -

20 DEFENDANT FALTAS: NO, NO.

21 MR. LUPTON: IT WAS NOT. PERHAPS IT'S A SEPARATE ONE. IN
22 ANY EVENT -

23 DEFENDANT FALTAS: I WANTED TO SAY -

24 THE COURT: LET HIM FINISH HIS STATEMENT.

25 DEFENDANT FALTAS: OKAY.

1- MR. LUPTON: AND PURSUANT TO YOUR ORDER FROM YESTERDAY
2 I BELIEVE THAT THAT WOULD BE APPROPRIATE FOR HER TO SUBMIT WHAT SHE
3 THINKS IS RELEVANT AND ALLOW THE COURT TO DECIDE.

4 THE COURT: ALL RIGHT. I WILL ACCEPT WHATEVER SHE HAS TO
5 SUBMIT SO LONG AS A COPY IS ALSO PROVIDED TO MR. FERNANDEZ. I DID
6 RECEIVE AN E-MAIL WITH A CORRESPONDENCE. I RESPONDED TO IT. I COPIED
7 MR. FERNANDEZ ON THE RESPONSE BECAUSE HE WAS NOT COPIED IN THE
8 ORIGINAL E-MAIL. AND IN THAT I HAVE MADE IT CLEAR THAT IT IS THE ORDER
9 OF THIS COURT IN ADDITION TO ANY OTHER ORDER THAT IS CURRENTLY
10 STANDING THAT THERE BE NO E-MAIL COMMUNICATIONS DIRECTLY WITH THE
11 COURT. AND HERE IS A COPY OF THAT E-MAIL RESPONSE WITH THE
12 ATTACHMENTS TO BE PLACED INTO THE RECORD AND BECAUSE I DON'T KNOW
13 THAT EVERYBODY GOT IT, HERE'S A COPY FOR IT TO BE SPREAD AROUND.

14 MR. FERNANDEZ: AND, YOUR HONOR, JUST TO THE DEFENDANT'S
15 - IN THE DEFENDANT'S DEFENSE I WAS NOT PROVIDED WITH A COPY OF THE E-
16 MAIL LIKELY BECAUSE SHE'S PROHIBITED FROM CONTACTING ME THROUGH
17 ANY MEANS BUT U.S. MAIL. IT WOULD HAVE BEEN A VIOLATION OF THE COURT
18 ORDER -

19 THE COURT: I WOULD NORMALLY SAY THAT YOU MAY HAVE
20 BEEN CORRECT BUT YOU WERE COPIED ON SOME E-MAIL EARLIER THIS WEEK SO
21 I DON'T KNOW THAT THAT STOPPED IT.

22 MR. FERNANDEZ: I WAS TOLD I WAS BUT -

23 THE COURT: YOU WERE.

24 MR. FERNANDEZ: BUT I ACTUALLY DID NOT RECEIVE THAT E-
25 MAIL.

1 **THE COURT:** YOU WERE ATTEMPTED TO BE. YOUR NAME WAS ON
2 IT.

3 **MR. FERNANDEZ:** OKAY. OKAY. ALL RIGHT. NOW –

4 **DEFENDANT FALTAS:** NO, NO. LET ME TELL YOUR HONOR WHAT
5 HAPPENED ON THIS, PLEASE, IF I MAY.

6 **THE COURT:** LOOK, DR. FALTAS, I'VE NOT MADE ANY FINDINGS
7 AGAINST YOU. I'VE NOT DONE ANYTHING TO PROHIBIT ANY FURTHER – EXCUSE
8 ME, THAT IS NOT TRUE. I'VE ONLY INHIBITED FURTHER ACTIVITY SO AT THIS
9 POINT IT DOESN'T NEED EXPLANATION BECAUSE I'M NOT TAKING ACTION.
10 WHAT WE ARE GOING TO DO IS WE ARE GOING TO GET THIS JURY OUT OF HERE
11 SO THEY CAN LEAVE BECAUSE THEY ARE HERE FOR FIVE DOLLARS A DAY AND
12 YOU'VE DECIDED THAT WE ARE NOT GOING TO USE THEM AND THEN WE ARE
13 GOING TO START THIS TRIAL. PLEASE BRING THE JURY IN.

14 **THE COURT:** DOES YOUR HONOR REALIZE HOW MUCH I CARE
15 WHAT YOU THINK OF ME?

16 **THE COURT:** IT'S NOT RELEVANT AT THIS TIME.

17 **DEFENDANT FALTAS:** OKAY.

18 (JURY VENIRE ENTERS THE COURTROOM AND IS DISMISSED)

19 **THE COURT:** ALL RIGHT, MR. FERNANDEZ, WE ARE READY FOR
20 OPENINGS.

21 **MR. FERNANDEZ:** I'M GOING TO WAIVE OPENING. I DON'T KNOW
22 IF MR. LUPTON WANTS TO ALSO.

23 **THE COURT:** THANK YOU VERY MUCH. MR. LUPTON, MR.
24 FERNANDEZ HAS WAIVED OPENING.

25 **MR. LUPTON:** YOUR HONOR, IF I CAN JUST HAVE A MINUTE. WHAT

- 1 Q. ALL RIGHT. YOUR NAME FOR THE RECORD, PLEASE.
- 2 A. DINAH STEELE MASON.
- 3 Q. AND I'M GOING TO MOVE THINGS ALONG FOR A BENCH TRIAL BUT
- 4 WOULD YOU TELL THE COURT ABOUT YOUR OCCUPATION AND WHAT
- 5 PROPERTIES YOU OWN?
- 6 A. I OWN THE [REDACTED] AND [REDACTED] BUILDING ON BYRON ROAD.
- 7 Q. AND IS THAT HOW YOU FIRST BECAME -
- 8 A. ACQUAINTED WITH?
- 9 Q. ACQUAINTED WITH THE DEFENDANT HERE TODAY?
- 10 A. ABSOLUTELY.
- 11 Q. AND WHAT WAS HER ROLE THERE AT THE [REDACTED] OR [REDACTED] BYRON ROAD
- 12 APARTMENTS?
- 13 A. SHE RENTED AN APARTMENT, APARTMENT NUMBER [REDACTED], AT THE [REDACTED]
- 14 BUILDING.
- 15 Q. AND WHAT DATE DID THAT BEGIN? APPROXIMATELY.
- 16 A. SEPTEMBER OF 2009? IS THAT RIGHT? '09. I'M NOT ABSOLUTELY SURE OF
- 17 THE DATE.
- 18 Q. THE BYRON ROAD APARTMENTS, [REDACTED] AND [REDACTED] ARE THEY WITHIN THE
- 19 CITY LIMITS OF COLUMBIA?
- 20 A. THAT WOULD HAVE BEEN 2008. I APOLOGIZE. 2008.
- 21 Q. AND IS THAT LOCATION WITHIN THE CITY LIMITS OF COLUMBIA?
- 22 A. IT IS.
- 23 Q. THE PERSON YOU BROUGHT A COURTESY SUMMONS OUT FOR SIMPLE
- 24 ASSAULT, THE REASON WE ARE HERE, MS. MARIE FALTAS, IS SHE PRESENT
- 25 TODAY?

1 A. SHE IS.

2 Q. AND IS SHE THE LADY SEATED AT DEFENSE TABLE?

3 A. SHE IS.

4 Q. I'M GOING TO -- I'M JUST GOING TO JUMP RIGHT TO IT, DINAH, AND DIRECT
5 YOUR ATTENTION TO THE DATE OF SEPTEMBER 11TH, 2009. ARE YOU FAMILIAR
6 WITH THAT DATE?

7 A. YEAH, THAT WAS THE DAY OF THE ASSAULT.

8 Q. DO YOU REMEMBER THAT DATE CLEARLY?

9 A. ABSOLUTELY.

10 Q. IF YOU WOULD, TELL ME WHAT YOU WERE DOING THAT DAY, WHAT
11 BRUOGHT YOU TO THE BYRON ROAD APARTMENTS AND THEN WALK US
12 THROUGH THE INCIDENT AND WHAT HAPPENED.

13 A. OKAY. I WAS THERE. IT WAS AROUND SEVEN O'CLOCK AT NIGHT. IT WAS
14 STILL LIGHT OUT AND I WAS DOING MAINTENANCE. I WAS DOING SOME
15 PAINTING ON THE ■■■ BUILDING. NOW THESE TWO BUILDINGS ARE EXTREMELY
16 CLOSE TO EACH OTHER, ALL RIGHT? SO I WAS IN BETWEEN THEM. OUT OF THE
17 CORNER OF MY EYE I SAW MARIE COMING AROUND TO MY SIDE THERE AND SHE
18 HAD A PAPER IN HER HAND. AND --

19 Q. HOW FAR AWAY WAS SHE WHEN YOU FIRST NOTICED HER COMING, WHEN
20 YOU SAY COMING AROUND THE SIDE? LIKE WHAT WOULD BE THE DISTANCE?

21 A. FOR THE WAY THAT THE BUILDING WAS SET UP, IN ORDER FOR ME TO SEE
22 HER I WOULD SAY PROBABLY ABOUT FIVE FEET FROM ME.

23 Q. ALL RIGHT. SO YOU NOTICED HER COMING AROUND THE CORNER TO
24 YOU?

25 A. YES.

1 Q. AND WHAT WAS HER GENERAL DEMEANOR AT THAT POINT? WHAT DID
2 YOU NOTICE ABOUT HER?

3 A. WELL, SHE HAD A PAPER IN HER HAND AND I JUST THREW MY HANDS UP
4 AND I SAID, MARIE, YOU NEED TO TAKE THAT TO THE ATTORNEY. AND I SAID
5 JUST, YOU KNOW, LEAVE ME ALONE.

6 Q. WHAT ATTORNEY? WHAT ARE YOU TALKING ABOUT?

7 A. WELL, WE HAD ALREADY HAD SOME LEGAL DISPUTES WITH HER AND THE
8 ATTORNEY HAD ADVISED ME, YOU KNOW, NOT TO HAVE ANY CONTACT WITH
9 HER, DON'T ACCEPT ANY PAPERWORK, JUST STAY AWAY FROM HER.

10 Q. AND YOU RELAYED THAT TO HER? YOU SAID, PLEASE, GIVE ME -

11 A. YES, ABSOLUTELY. JUST LEAVE ME ALONE, TAKE IT TO THE ATTORNEY,

12 Q. OKAY.

13 A. AND SO THEN I STARTED BACKING UP AND SHE STARTED CHARGING ME
14 AND I'M IN GOOD SHAPE. I COULD NOT GET AWAY FROM THIS WOMAN. SHE
15 WAS CHARGING ME AND I RETREATED THROUGH THE BUILDING. I COULDN'T GO
16 PAST HER BECAUSE THE BUILDINGS ARE SO CLOSE TOGETHER. I WOULD HAVE
17 TOUCHED HER IF I HAD MOVED FORWARD. I HAD NO CHOICE BUT TO RETREAT. I
18 HAD MY HANDS OUT LIKE THIS, GET AWAY FROM ME, GET AWAY FROM ME. AND
19 SHE CONTINUED TO CHARGE ME TO THE BACK SIDE OF THE ■■■ BUILDING
20 WHERE I WAS ASSAULTED. SHE SLAMMED ME IN THE CHEST THREE TIMES I
21 MEAN LIKE BAM, BAM, BAM. LIKE THAT. SPUN ME AROUND AND THE WHOLE
22 TIME I'M HOLDING MY HANDS OUT BECAUSE I DON'T WANT HER TOUCHING ME.

23 Q. RIGHT.

24 A. I DON'T WANT HER AROUND ME.

25 Q. DID YOU EVER ENGAGE IN ANY - DID YOU EVER ASSAULT HER IN DE-

1 FENSE OR DID YOU CONTINUE -

2 A. NO, ABSOLUTELY. I KNEW THAT'S WHAT SHE WANTED. THAT'S WHAT
3 SHE WANTED SO I TRIED TO STAY AWAY FROM HER. THE WHOLE TIME I WAS
4 BACKING UP, GET AWAY FROM ME, GET AWAY FROM ME. I WAS TRYING TO
5 RETREAT. AND I WAS RUNNING BACKWARDS AS FAST AS I COULD. I WOULDN'T
6 HAVE DARED OF GIVING HER MY BACK BECAUSE - I MEAN I WAS TOO AFRAID.

7 Q. IS THAT TRUE, THAT YOU HAVE - WAS THE TOUCHING OR THE ASSAULT
8 UNWANTED BY YOU?

9 A. ABSOLUTELY.

10 Q. AND WERE YOU FEARFUL AND - YOU KNOW, IN ANY SENSE?

11 A. YES. I ENDED UP HAVING A NERVOUS BREAKDOWN OVER THIS.

12 Q. AND WHAT WAS THE DEFENDANT YELLING AT YOU? WHAT WAS THE
13 VOLUME OF HER TONE?

14 A. SHE WAS YELLING AT ME. YOU KNOW, AFTER SHE SLAMMED ME THREE
15 TIMES IN THE CHEST, SHE POINTED AT ME AND SHE SAID, YOU GOT IT, YOU GOT
16 IT, YOU GOT IT. AND I'M LIKE ...

17 Q. AND HOW LOUD WAS SHE YELLING WOULD YOU SAY?

18 A. SHE WAS - IT WAS LOUD. IT WAS LOUD BECAUSE THERE WERE OTHER
19 TENANTS OUT AND ABOUT. THEY ALL CAME AROUND, ARE YOU ALL RIGHT, ARE
20 YOU ALL RIGHT. I MEAN I WAS JUST STUNNED. I CANNOT BELIEVE THIS
21 WOMAN ASSAULTED ME. I MEAN I AM THE MANAGER AND THE OWNER OF THE
22 APARTMENT COMPLEX. I MEAN THAT'S NOT AN INTELLIGENT MOVE.

23 Q. DO YOU HAVE ANY IDEA WHAT THIS WAS ABOUT?

24 A. AT THE TIME, I DIDN'T EVEN LOOK AT THE PAPER. I HAD NO IDEA WHAT
25 IT WAS.

- 1 Q. SO YOU DIDN'T KNOW (INAUDIBLE).
- 2 A. YEAH, I DIDN'T EVEN ACKNOWLEDGE THAT THERE WAS ANYTHING. I
- 3 JUST TOLD HER TAKE IT TO THE ATTORNEY.
- 4 Q. YOU KNOW WHAT IT WAS ABOUT AFTER THE FACT. IT'S ACCURATE TO
- 5 SAY YOU HAD NO IDEA WHAT SHE WAS -
- 6 A. AT THE TIME SHE ASSAULTED ME, I HAD NO IDEA WHAT THE PAPERWORK
- 7 WAS.
- 8 Q. AND YOU KNOW THIS WAS WITNESSED BY AT LEAST ONE PERSON,
- 9 CORRECT?
- 10 A. YEAH, ACTUALLY BY TWO.
- 11 Q. AND IS ONE OF THE PEOPLE HERE TODAY?
- 12 A. ONE.
- 13 Q. AND WHO WOULD THAT BE?
- 14 A. CHARLENE CROUCH. SHE WAS SITTING ON THE UPPER BALCONY. SHE
- 15 RENTS FROM THE [REDACTED] BUILDING UPSTAIRS. THERE'S AN OPEN BALCONY BACK
- 16 THERE AND, YOU KNOW, I WAS JUST LOOKING AT MARIE. I STILL HAD MY
- 17 HANDS OUT LIKE THIS AND I HEARD CHARLENE SAY, DINAH, ARE YOU ALL
- 18 RIGHT, ARE YOU ALL RIGHT. AND I WAS JUST STUNNED. AND THEN MITCH
- 19 CAME AROUND THE SIDE OF THE BUILDING LOOKING AT ME AND HE SAID,
- 20 DINAH, ARE YOU ALL RIGHT. AND THEN I CALLED THE POLICE.
- 21 Q. AND THE - WAS MS. CROUCH'S VIEW OBSTRUCTED? WOULD SHE HAVE
- 22 BEEN ABLE TO SEE?
- 23 A. SHE SAW - YEAH. THE ASSAULT HAPPENED DIRECTLY BEHIND THE
- 24 BUILDING. BUT I MEAN SHE HEARD ME SCREAMING ON MY WAY BACK THERE.
- 25 Q. AND DID YOU HAVE ANY MARKS OR ANYTHING AS A RESULT OF THE --

1 A. NO, I DID NOT. MENTALLY BECAUSE, LIKE I SAID, I ENDED UP HAVING A
2 NERVOUS BREAKDOWN OVER THIS. I'M STILL ON MEDICATION TODAY.

3 (INAUDIBLE)

4 THE COURT: DR. FALTAS, PLEASE DO NOT MAKE ANY OUTBURST.
5 WAS THAT YOU? HOLD ON FOR A SECOND. I'M SORRY. LET ME ASK FIRST, I
6 COULDN'T SEE. WAS THAT YOU THAT MADE THE NOISE JUST NOW? DR. FALTAS,
7 WAS THAT YOU THAT MADE IT?

8 DEFENDANT FALTAS: YES.

9 THE COURT: PLEASE DO NOT DO THAT.

10 Q. (BY MR. FERNANDEZ) JUST TO BE CLEAR BEFORE WE END 'CAUSE I THINK
11 WE ARE ALMOST DONE, THE BASIS FOR YOUR TAKING THE COURTESY SUMMONS
12 FOR THE ASSAULT IS THE THREE STRIKES ON YOUR CHEST?

13 A. ABSOLUTELY.

14 Q. AND HER AGGRESSIVE DEemeanOR LEADING UP TO THAT AND AFTER?

15 A. YES.

16 MR. FERNANDEZ: THAT'S ALL THE QUESTIONS I HAVE. THANK
17 YOU.

18 THE COURT: THANK YOU VERY MUCH. PLEASE ANSWER ANY
19 QUESTIONS MR. LUPTON MAY HAVE. MR. LUPTON, SO WE ARE CLEAR, I KNOW
20 THAT IT MAY NOT APPLY TO THIS WITNESS BUT THE RULINGS I MADE LIMITING
21 CROSS EXAMINATION I WILL ALLOW YOU TO CROSS EXAMINE IN FULL ON ALL
22 THE WITNESSES. THOSE RULINGS ARE WITHDRAWN.

23 MR. LUPTON: THANK YOU, YOUR HONOR.

24 CROSS EXAMINATION BY

25 MR. LUPTON:

1 Q. NOW YOU'VE TESTIFIED -- FIRST OF ALL, YOU STARTED OUT WITH A 911
2 CALL, CORRECT? WITH THIS CASE, REPORTING IT? STARTED OUT WITH A 911
3 CALL?

4 A. I REPORTED IT, YES. I DON'T QUITE UNDERSTAND YOU SAYING YOU
5 STARTED OUT WITH THAT.

6 Q. THE FIRST TIME YOU TOLD ANYONE OFFICIAL ABOUT THIS INCIDENT WAS
7 A 911 CALL?

8 A. YES.

9 Q. CORRECT?

10 A. YES.

11 MR. LUPTON: YOUR HONOR, AT THIS POINT --

12 Q. (BY MR. LUPTON) WELL, FIRST OF ALL -- AND IN THAT 911 CALL ISN'T IT
13 TRUE THAT WHAT YOU REPORTED WAS SHE CAME OVER HERE AND HARRASSED
14 ME AND PUSHED ON ME?

15 A. YES.

16 THE COURT: EXCUSE ME ONE MOMENT. WILL YOU HELP THAT
17 GENTLEMAN? (INAUDIBLE) PLEASE CONTINUE.

18 Q. (BY MR. LUPTON) SO SHE CAME OVER HERE AND HARRASSED ME AND
19 PUSHED ON ME?

20 A. YES.

21 Q. THAT WAS THE REPORT?

22 A. YES.

23 Q. YOU DIDN'T SAY ANYTHING ABOUT HER BEING VIOLENT OR HER
24 STRIKING YOU OR SLAMMING YOU OR ANYTHING OF THAT NATURE, IT WAS JUST
25 SHE PUSHED ON ME?

1 A. I DON'T KNOW EXACTLY -- I DON'T REMEMBER EXACTLY WHAT I SAID ON
2 THE 911. I'M SURE WE ARE GETTING READY TO HEAR IT BUT I DESCRIBED IT TO
3 THE POLICE OFFICER WHO COLLECTED THE POLICE REPORT AND I WAS
4 ASSAULTED ON IT.

5 Q. IF IT WOULD HELP YOU REFRESH YOUR RECOLLECTION, I'LL SHOW YOU A
6 TRANSCRIPT OF IT.

7 A. OKAY.

8 MR. FERNANDEZ: MAY I ASK WHO THAT TRANSCRIPT WAS
9 PREPARED BY?

10 MR. LUPTON: IRRELEVANT, YOUR HONOR, AS FAR AS WHETHER
11 OR NOT IT HELPS HER REFRESH.

12 THE COURT: I'M SORRY. I THINK IT DOES MATTER IN TERMS OF --
13 THIS IS A BENCH TRIAL. WHO MADE THE TRANSCRIPT?

14 MR. LUPTON: IF IT HELPS HER REFRESH HER RECOLLECTION IT
15 DOESN'T MATTER WHAT IT IS, YOUR HONOR.

16 THE COURT: OKAY. WELL, I'M CURIOUS. CAN YOU TELL ME?

17 MR. LUPTON: I HAVE NO IDEA, YOUR HONOR.

18 THE COURT: WELL, THAT'S THE ACCURATE AND TRUTHFUL
19 ANSWER YOU COULD COME FORWARD WITH THAT, MR. LUPTON. LET'S DO THIS.
20 TAKE A LOOK AT IT. I DON'T KNOW IF IT HELPS YOU OR NOT. LET US KNOW
21 DOES IT HELP YOU OR NOT.

22 A. BUT I'D SEEN MARIE FALTAS' --

23 THE COURT: JUST TAKE A LOOK AT IT AND TELL ME IF IT HELPS
24 YOU OR NOT.

25 A. OKAY. LET'S SEE HERE. (READS TO HERSELF)

1 Q. (BY MR. LUPTON) AND I'M ONLY ASKING ABOUT THE PART WHERE YOU
2 SAID THAT SHE PUSHED ON YOU.

3 A. YEAH.

4 Q. IS THAT WHAT YOU SAID?

5 A. YEAH. I WOULD SAY THAT'S PRETTY CLOSE. I DON'T KNOW THAT THAT'S
6 WORD FOR WORD BECAUSE MARIE DID THIS. SHE LIKES TO DELETE A LOT OF
7 LETTERS BECAUSE I'VE SEEN HER TRANSCRIPTS BEFORE.

8 MR. LUPTON: AT THIS TIME, I'D ASK TO ADMIT THE 911 CALL.

9 THE COURT: ALL RIGHT. DO YOU HAVE THE ABILITY TO PLAY IT
10 ON YOUR COMPUTER HERE?

11 MR. LUPTON: JUST THE FIRST PORTION. IT'S THE INITIAL
12 PARAGRAPH IS THE REPORT.

13 THE COURT: CAN I PLAY IT UP HERE? PLEASE TAKE A MOMENT..

14 DEFENDANT FALTAS: MR. LUPTON, MAY I SAY SOMETHING,
15 PLEASE?

16 MR. FERNANDEZ: YOUR HONOR, I THINK WHAT MR. LUPTON IS
17 GETTING TO IS THAT PER AGREEMENT OR - PER AGREEMENT WE AGREED WE
18 WOULD RELAX THE RULES OF ADMISSIBILITY FOR A 911 CALL AS NOT
19 REQUIRING A CUSTODIAN. I WILL CONSENT TO IT BEING PUBLISHED FOR YOUR
20 HONOR ON THE WORD OF A FELLOW OFFICER OF THE COURT THAT THAT IS IN
21 FACT THE 911 CALL THAT WAS PROVIDED THROUGH DISCOVERY.

22 THE COURT: OKAY. CORRECT. IT WILL BE PUBLISHED AND
23 ADMITTED. DO WE HAVE AN AGREEMENT ON ADMISSION?

24 MR. LUPTON: YES, YOUR HONOR. THAT WAS AT THE PRIOR HEAR-
25 ING WE AGREED ON THAT.

-1 **THE COURT:** ALL RIGHT. BY STIPULATION.

2 (911 TAPE IS PLAYED:

3 SEPTEMBER 11TH, 2009, THE TIME 7:11 P.M.

4 9-1-1, WHAT IS YOUR EMERGENCY?

5 **MS. STEELE:** YEAH, THIS IS DINAH STEELE. I'M AT 600-5953. I'M
6 LOCATED AT [REDACTED] BYRON ROAD. I'M THE OWNER OF THE BUILDING. I HAVE BEEN
7 HAVING A PROBLEM WITH A TENANT THAT I'M EVICTING. SHE'S COME OVER
8 HERE TRESPASSING. I'VE ALREADY SIGNED A COURTESY SUMMONS ABOUT THE
9 TRESPASSING, AND SHE CAME OVER HERE AND HARRASSED ME AND PUSHED ON
10 ME AGAIN. I'D LIKE AN OFFICER TO COME OVER HERE, PLEASE.

11 **OPERATOR:** OKAY. YOU SAID [REDACTED] BYRON?

12 **MS. STEELE:** YES, MA'AM. IT'S RIGHT NEXT TO THE V.A.
13 HOSPITAL.

14 **OPERATOR:** IS IT THE BYRON ROAD APARTMENTS?

15 **MS. STEELE:** YES - NO, IT'S THE ONES ON THE RIGHT-HAND SIDE
16 AS YOU COME IN. THE FIRST ONE AS YOU COME DOWN BYRON ROAD.

17 FRIDAY, SEPTEMBER 11TH, 2009, THE TIME 7:12 P.M.

18 **OPERATOR:** WHAT'S THE APARTMENT NUMBER?

19 **MS. STEELE:** I'M STANDING OUTSIDE.

20 **OPERATOR:** OKAY. IS THERE A BUILDING (INAUDIBLE) THAT IT'S
21 AROUND OR ...

22 **MS. STEELE:** [REDACTED] BUILDING IS THE ADDRESS FOR THE BUILDING.
23 [REDACTED] BYRON ROAD.

24 **OPERATOR:** IS SHE STILL THERE?

25 **MS. STEELE:** YEAH, SHE WENT UP TO HER APARTMENT.

1 OPERATOR: OKAY. SO DOES THE APARTMENT HAVE-- DO THOSE
2 APARTMENTS HAVE A NAME?

3 MS. STEELE: NO, THAT'S THE ADDRESS.

4 OPERATOR: DOES THE APARTMENT COMPLEX HAVE A NAME?

5 MS. STEELE: NO. THE ADDRESS IS ■ BYRON ROAD. THAT'S
6 WHERE I'M LOCATED AT. SHE'S IN THE ■ BUILDING.

7 OPERATOR: AND WE ARE STANDING OUTSIDE OF THAT?

8 MS. STEELE: I'M STANDING OUT FRONT. I'LL BE OUT FRONT.

9 OPERATOR: SHE'S ON NO TRESPASS?

10 MS. STEELE: YEAH, SHE'S ALREADY BEEN GIVEN A NO TRESPASS
11 AND I SIGNED A COURTESY SUMMONS ABOUT THE LAST TRESPASS WHICH WAS -
12 SHE SHOULD HAVE ALREADY BEEN SERVED IT. I SIGNED IT EARLIER THIS WEEK.

13 OPERATOR: ARE YOU GOING TO BE WAITING OUTSIDE?

14 MS. STEELE: I AM GOING TO WAIT. I'M WAITING RIGHT NOW.

15 OPERATOR: OKAY. IS SHE BLACK, WHITE, HISPANIC?

16 MS. STEELE: SHE'S EGYPTIAN.

17 OPERATOR: EGYPTIAN?

18 MS. STEELE: YEAH.

19 OPERATOR: OKAY. DOES SHE LOOK BLACK, WHITE OR HISPANIC?

20 MS. STEELE: SHE PROBABLY LOOKS MORE LIKE MAYBE - I MEAN
21 IF YOU HAD TO DESCRIBE IT I GUESS MORE LIKE HISPANIC. SHE'S LIKE OLIVE
22 COMPLECTED.

23 OPERATOR: OKAY. DO YOU KNOW WHAT SHE'S WEARING?

24 MS. STEELE: NOT - A SKIRT AND A SHIRT.

25 OPERATOR: DO YOU KNOW WHAT COLOR SHIRT?

1 MS. STEELE: NO, I DIDN'T REALLY PAY ATTENTION TO IT.

2 OPERATOR: DO YOU KNOW WHAT APARTMENT SHE WENT INTO?

3 MS. STEELE: YEAH, SHE'S IN APARTMENT NUMBER [REDACTED] AT [REDACTED]

4 FRIDAY, SEPTEMBER 11TH, 2009, THE TIME 7:15 P.M.

5 OPRATOR: YOU SAID APARTMENT [REDACTED] IN BUILDING [REDACTED]

6 MS. STEELE: THAT'S CORRECT.

7 OPERATOR: AND -

8 MS. STEELE: I'M DINAH STEELE. I'M THE OWNER OF THE

9 BUILDING.

10 OPERATOR: WHAT'S YOUR LAST NAME?

11 MS. STEELE: STEELE, S-T-E-E-L-E (SPELLED).

12 OPERATOR: WHAT'S THE PHONE NUMBER YOU ARE CALLING

13 FROM?

14 MS. STEELE: [REDACTED]

15 OPERATOR: OKAY. AND YOU ARE GOING TO BE WAITING OUTSIDE

16 FOR THE OFFICER?

17 MS. STEELE: I AM. I'M WAITING ON (INAUDIBLE) NOW.

18 OPERATOR: AND WAS THERE ANY WEAPON INVOLVED?

19 MS. STEELE: NO, MA'AM.

20 OPERATOR: BUT YOU DID CONFRONT HER?

21 MS. STEELE: SHE CONFRONTED ME.

22 OPERATOR: OH, SHE CONFRONTED YOU?

23 FRIDAY, SEPTEMBER 11TH, 2009, THE TIME 7:16 P.M.

24 OPERATOR: OAKY. ALL RIGHT.

25 MS. STEELE: THANK YOU.

1 OPERATOR: YOU'RE WELCOME.)

2 THE COURT: ALL RIGHT. I'D LIKE TO HAVE THIS MARKED AS
3 DEFENDANT'S ONE, PLEASE.

4 (911 TAPE IS RECEIVED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
5 #1)

6 Q. (BY MR. LUPTON) SO WHAT YOU SAID WAS SHE CAME OVER HERE AND
7 HARRASSED ME AND PUSHED ON ME?

8 A. YES.

9 Q. AND IN THAT RECORDING YOU DIDN'T SAY ANYTHING ABOUT BEING
10 INJURED OR HURT, CORRECT?

11 A. NO, I WAS NOT - I DIDN'T HAVE ANY MARKS ON ME. I ENDED UP WITH NO
12 BRUISES EXCEPT, LIKE I SAID, I ENDED UP HAVING A NERVOUS BREAKDOWN BUT
13 I WASN'T CUT.

14 Q. YOU ARE NOT TRYING TO SAY THAT THAT NERVOUS BREAKDOWN WAS
15 SOLELY RELATED - WAS CAUSED BY THIS, ARE YOU?

16 A. I WOULD SAY COLLECTIVELY THAT WAS THE LAST STRAW.

17 Q. SO -

18 A. I FEARED FOR MY LIFE. BY THAT TIME I WAS ALREADY FEARFUL OF
19 GOING OVER TO THAT APARTMENT COMPLEX BECAUSE OF MARIE. I WAS
20 HARRASSED CONTINUOUSLY. EVERY TIME I WENT OVER THERE SHE CALLED
21 THE POLICE ON ME. EVERY TIME I WENT OVER THERE TO DO THE
22 MAINTENANCE, TO CUT GRASS SHE CALLED THE POLICE ON ME. THIS WAS
23 ESCALATING OUT OF CONTROL.

24 Q. SO YOU DIDN'T HAVE A NERVOUS BREAKDOWN CAUSED BY THIS EVENT?

25 A. I WOULD SAY IT WAS PARTLY - YEAH, YEAH. I WOULD SAY YES.

- 1 Q. YOU HAD IT BECAUSE OF THIS?
- 2 A. YES, I WAS ASSAULTED, MY MAN.
- 3 Q. AND SO – AND YOU TALKED ABOUT YOU ARE STILL ON MEDICATION
- 4 FROM IT?
- 5 A. YES.
- 6 Q. AND YOU WENT TO THE DOCTOR?
- 7 A. YES
- 8 Q. AND GOT MEDICATION FOR IT?
- 9 A. YES.
- 10 Q. AND DO YOU RECALL TESTIFYING TWO MONTHS AFTER THIS AT A
- 11 HEARING, IN BELIEVE IT WAS CIRCUIT COURT, PERHAPS MAGISTRATE'S COURT,
- 12 A RESTRAINING ORDER HEARING?
- 13 A. YES.
- 14 Q. AND DO YOU RECALL AT THAT TIME SAYING YOU DID NOT GO TO A
- 15 DOCTOR?
- 16 A. NO, I WENT IN JANUARY. I ENDED UP GOING IN JANUARY.
- 17 Q. SO YOU DIDN'T GO TO A DOCTOR –
- 18 A. NOT THAT NIGHT.
- 19 Q. YOU DIDN'T GO TO A DOCTOR UNTIL JANUARY OF 2010?
- 20 A. '10, YEAH. YEAH, THAT'S WHEN I ENDED UP GOING. THIS WAS ALL –
- 21 Q. AT THE NOVEMBER, 2009, HEARING – NOVEMBER 10, 2009, HEARING—
- 22 A. I STILL HADN'T GONE TO THE DOCTOR THEN.
- 23 Q. YOU TESTIFIED THAT YOU HADN'T GONE TO A DOCTOR?
- 24 A. NO. HUH-UH, I HADN'T.
- 25 Q. YOU TESTIFIED YOU WERE NOT TAKING ANY MEDICATION?

- 1 A. NOT THEN I WASN'T, NO.
- 2 Q. SO NOT UNTIL JANUARY OR SOME TIME AFTER THAT?
- 3 A. RIGHT. THAT WAS AFTER FOUR TIMES SHE WENT TO DIFFERENT JUDGES
- 4 TRYING TO GET THIS THING, THIS TRESPASS THING WHERE SHE COULD COME
- 5 BACK ONTO THE PROPERTY AND I ENDED UP GOING TRYING TO – THEY WANTED
- 6 ME TO GO TO SUMTER TO HAVE ANOTHER HEARING AND, LIKE I SAID, THIS ISN'T
- 7 MY PLAYGROUND, I DON'T KNOW WHAT ALL THE RULES ARE BUT I WAS LIVID
- 8 THAT I WAS GOING TO HAVE TO GO TO SUMTER TO DEFEND MYSELF IN COURT
- 9 AND IT WAS A TRAVELING JUDGE. THAT'S WHAT I DIDN'T UNDERSTAND. AND
- 10 THEN I JUST – I COULDN'T HANDLE IT ANY MORE. I JUST ABSOLUTELY – ALL THE
- 11 HARRASSMENT, THE ASSAULT, JUST NON-STOP HARRASSMENT EVERY TIME I
- 12 WENT THERE. SHE HARRASSED ME TO NO END ALONG WITH ALL THE TENANTS
- 13 AND, YEAH, I BROKE. IN JANUARY I JUST BROKE.
- 14 Q. SO YOU BROKE IN JANUARY?
- 15 A. YES.
- 16 Q. BUT AT 7:11 ON SEPTEMBER 11TH?
- 17 A. RIGHT.
- 18 Q. SHE PUSHED ON YOU?
- 19 A. YES.
- 20 Q. OFFICER SHOWS UP ABOUT 7:20, CORRECT? THEREABOUTS?
- 21 A. YEAH.
- 22 Q. AND HE TALKS TO YOU?
- 23 A. YES.
- 24 Q. AND AFTER YOU'VE TALKED TO HIM THE STATEMENT FROM YOU IS THAT
- 25 HE WRITES DOWN IS THAT YOU ARE SAYING IT WAS A VERY HOSTILE AND VERY

- 1 VIOLENTLY PUSHED.
- 2 A. IT WAS.
- 3 Q. SO IT'S CHANGED FROM JUST PUSHED ON ME TO VERY HOSTILE AND
- 4 VERY VIOLENTLY AND SAID IT WAS IN THE UPPER CHEST WITH AN OPEN HAND?
- 5 A. YES.
- 6 Q. AND THE OFFICER - YOU TOLD THE OFFICER ABOUT ALL YOUR
- 7 WITNESSES?
- 8 A. YES. THERE WERE TWO WITNESSES.
- 9 Q. AND THE OFFICER ONLY LISTED ONE WITNESS?
- 10 A. YES.
- 11 Q. SO YOU SAY THAT YOU TOLD EVERYBODY, TALKED TO HIM ABOUT ALL
- 12 THE WITNESSES BUT HE ONLY LISTS ONE?
- 13 A. I DON'T KNOW WHAT HE WROTE DOWN BUT THERE WERE TWO
- 14 WITNESSES, YES.
- 15 Q. AND YOU TESTIFIED TODAY THAT THERE WERE TWO WITNESSES?
- 16 A. THERE WERE.
- 17 Q. YOU TESTIFIED ON NOVEMBER 10TH, 2009, THAT THERE WERE THREE
- 18 WITNESSES.
- 19 A. WELL, MR. CHARLIE CAME AROUND THE CORNER. I CAN'T SAY TO WHAT
- 20 HE SAID HE SAW.
- 21 Q. WELL, YOU SAID -
- 22 A. HE WAS THERE. HE WAS THERE.
- 23 Q. YOU SAID UNDER OATH ON NOVEMBER 10TH, 2009, THAT THERE WERE
- 24 THREE WITNESSES?
- 25 A. YES. MR. CHARLIE DID COME AROUND THE SIDE OF THE BUILDING.

1 Q. BUT THE OFFICER DIDN'T TAKE ANY STATEMENTS THAT DAY ON
2 SEPTEMBER 11TH?

3 A. NO, HE JUST TOOK MY STATEMENT.

4 Q. HE WROTE THE REPORT BASED ON WHAT YOU SAID?

5 A. HE DID, YES.

6 Q. BUT HE DIDN'T ARREST ANYBODY?

7 A. NO. I WAS LIVID ABOUT THAT.

8 Q. SO HE CAME, HE ASSESSED AND HE, IN HIS DISCRETION, DECIDED THERE
9 WAS NO ASSAULT?

10 A. NO, THAT'S NOT WHAT HE SAID.

11 MR. FERNANDEZ: YOUR HONOR, I OBJECT.

12 A. NO, NO, NO, ABSOLUTELY NOT.

13 THE COURT: OBJECTION SUSTAINED.

14 MR. FERNANDEZ: CAN I ARTICULATE MY OBJECTION?

15 THE COURT: PLEASE DO.

16 MR. FERNANDEZ: COUNSEL ARGUED MANY TIMES THE RAMSEY
17 CASE ABOUT INCIDENTS NOT OCCURRING IN FRONT OF – IN THE OFFICER'S
18 PRESENCE. I THINK IT'S A BIT CONTRADICTORY TO NOW ARGUE THAT THE
19 OFFICER SHOULD OF OR IMPLIED THAT THE OFFICER SHOULD HAVE ARRESTED
20 FOR A CONDUCT HE DID NOT WITNESS.

21 THE COURT: ALL RIGHT. LET'S MAKE IT SHORT. THE OBJECTION
22 IS SUSTAINED. PLEASE REPHRASE.

23 Q. (BY MR. LUPTON) AFTER – REGARDLESS OF WHAT THE OFFICER DECIDED
24 OR DIDN'T DECIDE, AFTER THE OFFICER HEARD YOU, HEARD WHATEVER
25 WITNESSES, HE ONLY LISTED ONE, BUT HOW MANY EVER HE TALKED TO HE DID

1 NOT MAKE AN ARREST?

2 A. NO, HE DIDN'T.

3 Q. NOR DID HE GO AND GET AN ARREST WARRANT?

4 A. NO.

5 Q. AND NO WRITTEN STATEMENTS WERE TAKEN FROM YOU OR ANY OTHER
6 WITNESS?

7 A. NO.

8 Q. HE DID THE VERBAL AND WROTE HIS REPORT. AND THEN IN OCTOBER,
9 OCTOBER 14TH, 2009, YOU MAKE YOUR FIRST OFFICIAL WRITTEN STATEMENT ON
10 THIS?

11 A. UH-HUH.

12 Q. AND YOU STATE SHE VIOLENTLY STRUCK ME THREE TIMES IN THE CHEST
13 AREA WITH PAPERS IN HER HAND SAYING YOU GOT IT, YOU GOT IT?

14 A. YEAH.

15 Q. SO IT'S GONE FROM PUSHED ON ME TO VIOLENTLY PUSHED TO NOW
16 STRUCK IN THE COURSE OF THOSE THREE STATEMENTS, CORRECT?

17 A. SHE VIOLENTLY STRUCK ME IN THE CHEST.

18 Q. ALL RIGHT .

19 A. I WAS TRYING - WHEN I MADE THE 911 CALL I WAS JUST TRYING TO BE AS
20 CLEAR BECAUSE I WAS VERY UPSET AND WAS TRYING TO JUST BE AS CLEAR AS I
21 POSSIBLY COULD WITHOUT FALLING APART OVER THE PHONE.

22 Q. AND THEN IN NOVEMBER, ON NOVEMBER 10TH, 2009, YOU SAY SHE CAME
23 TOWARDS YOU WITH A PAPER IN HER HAND AND KEPT SHOVING IT AT YOU?

24 A. YEAH.

25 Q. AND THAT SHE ENDED UP SLAMMING YOU THREE TIMES WHICH KNOCKED

1 Q. AND THAT SHE ENDED UP SLAMMING YOU THREE TIMES WHICH KNOCKED
2 YOU BACK?

3 A. SHE DID.

4 Q. SO IT'S GONE FROM JUST PUSHING ON ME TO VIOLENT AND EVERY TIME
5 YOU GIVE THE STATEMENT IT GETS MORE SERIOUS?

6 A. UH-HUH.

7 Q. BUT YOU ALSO ADMITTED ON THAT DAY SHE DIDN'T KNOCK YOU DOWN?

8 A. NO, SHE DID NOT. THAT WAS ONLY DUE TO MY AGILITY.

9 Q. YOU HAD NO BRUISES, NO MARKS –

10 A. NO BRUISES.

11 Q. NO BROKEN BONES?

12 A. NO CUTS –

13 Q. NO INJURIES?

14 A. NO BROKEN BONES.

15 Q. YOU DIDN'T HAVE ANY KIND OF PHYSICAL INJURIES AT ALL?

16 A. OTHER THAN THE MENTAL.

17 Q. WHICH YOU TESTIFIED OCCURRED AS A RESULT OF ALL THE
18 HARRASSMENT –

19 A. YEAH, I DID. I WENT TO THE DOCTOR IN JANUARY. IT'S ALL COLLECTIVE.

20 Q. AND THE COURT'S ACTIONS AND THE NUMBER OF COURT CASES AND THE
21 FACT THAT THE COURTS MADE YOU GO FROM ONE PLACE TO THE OTHER?

22 A. YES.

23 Q. BUT AS A DIRECT RESULT YOU DIDN'T SEE A DOCTOR? AS A DIRECT
24 RESULT OF THIS –

25 A. I DIDN'T SEE A DOCTOR THAT NIGHT.

1 Q. OR ANY TIME THE NEXT COUPLE OF MONTHS?

2 A. NOT UNTIL JANUARY.

3 MR. FERNANDEZ: I OBJECT. WE COVERED ALREADY.

4 THE COURT: WE HAVE COVERED IT. I WILL GRANT HIM A LITTLE
5 LEEWAY. I CAN ADDRESS IT.

6 Q. (BY MR. LUPTON) AND NO MEDICATIONS?

7 A. NOT UNTIL JANUARY.

8 Q. NOW LET'S TALK ABOUT - THAT'S THE STORY AND, OF COURSE, WE'VE
9 GOT ALL THOSE AND THEN NOW HERE TODAY YOU'VE CONVERTED IT TO
10 SLAMMING OR ACTUALLY I SUPPOSE YOU SAID THAT - THAT WAS THE FOURTH
11 (INAUDIBLE). LET'S TALK ABOUT WHAT SHE WAS DOING. SHE CAME AT YOU
12 WITH A PIECE OF PAPER?

13 A. UH-HUH.

14 Q. YOU WERE TRYING TO - YOU HAD PROVIDED HER NOTICE THAT YOU
15 WANTED TO DO AN INSPECTION OF HER APARTMENT, CORRECT?

16 A. YES.

17 Q. SHE OBJECTED TO YOU DOING THE INSPECTION ON THE DATE THAT YOU
18 WANTED TO DO IT, CORRECT?

19 A. I DIDN'T READ THE PAPER SO AT THAT TIME -

20 Q. YOU KNOW -

21 A. YEAH, I UNDERSTAND WHAT YOU ARE SAYING. I DIDN'T READ IT AT THE
22 TIME.

23 Q. YOU CERTAINLY COULDN'T HAVE READ IT BEFORE SHE GAVE IT TO YOU
24 SO YOU DIDN'T KNOW WHAT (INAUDIBLE)?

25 A. ABSOLUTELY.

1 Q. - BUT WE KNOW NOW THAT WHAT SHE WAS TRYING TO DO IS GIVE YOU AN
2 OBJECTION TO YOU ENTERING HER APARTMENT WHICH SHE HAS A RIGHT TO DO
3 UNDER HER LEASE AND UNDER THE LAW, CORRECT? OBJECT TO YOU ENTERING
4 HER APARTMENT AT LEAST ON A PARTICULAR DATE?

5 A. SHE HAS THE RIGHT TO OBJECT TO A DEGREE. UNDER MY LEASE BY LAW
6 I CAN - IT'S IN MY LEASE THAT SAYS THAT I CAN DO INSPECTIONS UNDER THE
7 LAW THAT ALLOWS ME TO GIVE HER TWENTY-FOUR NOTICE AND GO IN.

8 Q. AND SHE HAS A RIGHT TO OBJECT AND ASK FOR IT TO BE SCHEDULED AT
9 A DIFFERENT TIME.

10 A. AND WE DID NOT GO IN.

11 Q. BUT MY POINT IS SHE WAS SERVING YOU SOMETHING THAT SHE HAD A
12 RIGHT TO SERVE YOU, CORRECT?

13 A. THAT - YEAH.

14 Q. AND YOU WOULDN'T TAKE IT FROM HER?

15 A. NO.

16 Q. AND SHE WAS TRYING TO GIVE IT TO YOU?

17 A. UH-HUH. DIDN'T MEAN SHE COULD SLAM ME IN THE CHEST WITH IT.
18 DOESN'T MEAN SHE CAN ASSAULT ME WITH IT.

19 Q. SHE HIT YOU WITH IT IN THE CHEST?

20 A. NO, NO, NO, NO. I WOULD BE GLAD TO DEMONSTRATE WHAT SHE DID ON
21 YOU AS LONG AS I'M NOT -

22 DEFENDANT FALTAS: OKAY. OKAY. PLEASE, PLEASE.

23 THE COURT: DR. FALTAS, YOU WAIT. YOU ANSWER HIS
24 QUESTIONS.

25 A. YES, SIR.

1 Q. (BY MR. LUPTON) AND SHE SERVED YOU THIS PAPER?

2 A. YES. AND I HAVE SERVED PAPERS BEFORE. YOU ARE NOT ALLOWED TO
3 ASSUALT SOMEBODY AS YOU ARE SERVING THE PAPER. THAT IS A CRIME.

4 Q. NOW YOU TESTIFIED THAT YOU DIDN'T WANT HER TOUCHING YOU BUT
5 THAT THERE WERE NO MARKS, NO INJURIES, NOTHING LIKE THAT AS A RESULT?

6 A. NO.

7 MR. LUPTON: I BEG THE COURT'S INDULGENCE.

8 THE COURT: YES, SIR.

9 (PAUSE)

10 Q. (BY MR. LUPTON) AND, IN FACT, IN ONE OF YOUR VERSIONS OF THE STORY
11 YOU TALK ABOUT BEING SPUN AROUND, CORRECT?

12 A. I WAS.

13 Q. THAT WASN'T IN ANY OF THE -- THAT WAS ON NOVEMBER. THAT WASN'T
14 ANYTHING YOU SAID IN ANY OF THE PRIOR STATEMENTS, TWICE IN SEPTEMBER
15 OR THE ONE IN OCTOBER. SO THAT WAS SOMETHING NEW IN NOVEMBER.
16 CORRECT?

17 A. I DID NOT FALL.

18 Q. AND OBVIOUSLY THE COURT IS AWARE BUT THERE HAS BEEN
19 CONSIDERABLE TENSION AND LITIGATION AND BACK AND FORTH COMPLAINTS
20 WITH YOU AND THIS DEFENDANT, CORRECT?

21 A. ABSOLUTELY.

22 MR. LUPTON: THANK YOU, YOUR HONOR.

23 THE COURT: THANK YOU. ANY REDIRECT?

24 MR. FERNANDEZ: VERY BRIEFLY. THANK YOU, YOUR HONOR.

25 REDIRECT EXAMINATION BY

1 MR. FERNANDEZ:

2 Q. I'M GOING TO HAND YOU THE POLICE REPORT HERE. I'M SURE YOU ARE
3 FAMILIAR WITH IT. IF YOU WOULD, JUST TAKE A SECOND TO READ IT AND TELL
4 ME IF YOU RECOGNIZE THAT REPORT?

5 A. SHE WAS VERY HOSTILE AND VIOLENTLY --

6 Q. YOU DON'T HAVE TO READ IT YES. JUST READ IT TO -- I'M SORRY. JUST
7 READ IT TO YOURSELF AND TELL ME IF YOU ARE FAMILIAR WITH THAT REPORT?

8 A. YES, I AM.

9 Q. WOULD IT BE ACCURATE TO SAY THAT REPORT IS THE REPORT THAT WAS
10 PREPARED FOR THIS INCIDENT THAT WE ARE HERE FOR TODAY, CORRECT?

11 A. YES.

12 Q. AND THE SUMMARY THAT YOU GAVE TO THE OFFICER, DID HE
13 ACCURATELY RELAY WHAT YOU SAID TO HIM?

14 A. HE DID.

15 Q. AND IS THAT -- WHATEVER YOU SAID TO THE OFFICER THAT HE PUT IN
16 THE REPORT, IS THAT CONSISTENT TO WHAT YOU TESTIFIED HERE TODAY?

17 A. ABSOLUTELY.

18 Q. AND THAT REPORT WAS TAKEN PROBABLY, WHAT, TWENTY MINUTES
19 AFTER THE EVENT?

20 A. YEAH, RIGHT AFTER THE ASSAULT.

21 MR. FERNANDEZ: THANK YOU.

22 Q. (BY MR. LUPTON) WELL, IN THAT REPORT -- I'M SORRY.

23 MR. FERNANDEZ: NO FURTHER QUESTIONS.

24 MR. LUPTON: THAT'S WHAT I THOUGHT. I APOLOGIZE. I WASN'T
25 TRYING TO INTERRUPT.

1 RECROSS EXAMINATION BY

2 MR. LUPTON:

3 Q. IN THAT REPORT THAT YOU SAY HE ACCURATELY REFLECTED WHAT
4 YOU TOLD HIM, YOU TOLD HIM THAT SHE APPROACHED YOU IN THE REAR OF
5 THE BUILDING, NOT ON THE SIDE. IS THAT NOT CORRECT?

6 A. (PAUSE)

7 Q. THE VERY FIRST THING THAT'S IN -

8 A. APPROACHED HER IN THE REAR RESIDENCE. I MEAN SHE ORIGINALLY --
9 IT WAS ON THE SIDE AND THEN ENDED UP IN THE REAR OF THE RESIDENCE.

10 Q. WHAT YOU TOLD THE OFFICER WAS APPROACHED IN THE REAR?

11 A. UH-HUH.

12 Q. SO ON THIS REPORT THAT YOU SAY IS ACCURATE YOU TOLD HIM REAR
13 AND NOW YOU'RE SAYING THAT IT WAS ON THE SIDE AND THAT SHE CHASED
14 YOU?

15 A. THE INCIDENT HAPPENED IN THE REAR. THE ACTUAL ASSAULT
16 HAPPENED IN THE REAR OF THE BUILDING.

17 Q. WHAT YOU SAID HERE IS SHE APPROACHED IN THE REAR?

18 A. IT WAS ACTUALLY ON THE SIDE OF THE BUILDING, THE FIRST CONTACT.

19 MR. LUPTON: NOTHING FURTHER.

20 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

21 (WITNESS TO THE SIDE)

22 THE COURT: COURT OFFICER, CAN YOU GET MS. CROUCH, PLEASE.

23 MR. FERNANDEZ: THE CITY WOULD CALL CHARLENE CROUCH.

24 THE COURT: THANK YOU, SIR. IT WILL TAKE US A MOMENT TO
25 GET HER FROM THE HALLWAY. ANY POSITION ON WHETHER OR NOT MS. STEELE

1 NEEDS TO BE EXCUSED FROM THE COURTROOM IN CASE SHE IS CALLED AS A
2 REPLY WITNESS?

3 MR. LUPTON: YOUR HONOR, UNDER SEQUESTER STANDARD
4 RULES IF THEY ARE GOING TO RECALL HER THEY WOULD HAVE TO EXCUSE HER.
5 IF THEY ARE NOT THEN I'M FINE WITH HER STAYING.

6 MR. FERNANDEZ: YEAH, JUST TO BE SAFE, LET'S JUST KEEP ALL
7 OPTIONS OPEN.

8 THE COURT: THANK YOU VERY MUCH. PLEASE GO OUT MS.
9 STEELE.

10 MR. FERNANDEZ: THANK YOU, YOUR HONOR.

11 CHARLENE CROUCH, AFTER BEING DULY SWORN BY THE
12 COURT, TESTIFIES AS FOLLOWS:

13 THE COURT: PLEASE HAVE A SEAT AND ANSWER ANY QUESTIONS
14 MR. FERNANDEZ MAY ASK YOU.

15 DIRECT EXAMINATION BY

16 MR. FERNANDEZ:

17 Q. MS. CROUCH, YOUR NAME FOR THE RECORD, PLEASE?

18 A. CHARLENE CROUCH.

19 Q. AND, MS. CROUCH, YOU WERE A RESIDENT OF ■ BYRON ROAD,
20 CORRECT?

21 A. YES, SIR.

22 Q. DO YOU REMEMBER THE DATES YOU WERE A RESIDENT AT THAT
23 LOCATION?

24 A. I THINK I MOVED IN, WHAT, 2007? AND I STAYED LIKE MAYBE FOUR
25 YEARS.

- 1 Q. SO SOMEWHAT RECENTLY MOVED OUT, 2011 MAYBE?
- 2 A. NO. I'VE BEEN GONE -- HOW LONG? A COUPLE -- ABOUT TWO YEARS.
- 3 Q. WERE YOU LIVING AT THE APARTMENT COMPLEX IN 2009?
- 4 A. YES.
- 5 Q. AND THE DATE SEPTEMBER 11TH, 2009, DO YOU REMEMBER THAT DAY?
- 6 A. YES.
- 7 Q. AND I HAVE SOME -- IF YOU EVER NEED TO REFRESH YOUR MEMORY ON
- 8 CERTAIN SPECIFICS, THERE IS SOME PAPERWORK I CAN GIVE YOU BUT I WILL
- 9 WORK MOSTLY OFF YOUR MEMORY. AND THAT DAY THERE WAS AN INCIDENT
- 10 ALLEGED THAT OCCURRED ON THAT DAY BETWEEN -- DO YOU RECALL
- 11 WITNESSING AN INCIDENT BETWEEN THE DEFENDANT, MARIE FALTAS, AND MS.
- 12 DINAH STEELE MASON?
- 13 A. YES.
- 14 Q. MARIE FALTAS. ARE YOU FAMILIAR WITH HER?
- 15 A. YES.
- 16 Q. IS SHE HERE TODAY?
- 17 A. YES.
- 18 Q. IS SHE THE WOMAN THAT WAS THE SUBJECT OF THIS INCIDENT?
- 19 A. YES.
- 20 Q. DID -- DESCRIBE YOUR APARTMENT LOCATION AT THIS AREA. WHERE IS
- 21 YOUR APARTMENT LOCATED AT [REDACTED] BYRON?
- 22 A. WELL, WHEN I LIVED THERE I WAS IN THE [REDACTED] BUILDING AND SHE WAS IN
- 23 THE BUILDING BESIDE THERE. IT WAS LIKE IN THE EVENING TIME AND SHE HAD
- 24 SOME PAPERWORK IN HER HAND AND DINAH, MY EX-LANDLORD, SHE WAS ALSO
- 25 OVER THERE. I WAS SITTING ON MY PATIO AND --

- 1 Q. IS YOUR PATIO ON THE SECOND STORY OR THE FIRST STORY?
- 2 A. SECOND.
- 3 Q. DID YOU HAVE A VIEW OF EVERYTHING THAT WAS GOING ON?
- 4 A. YEAH, I DID. UH-HUH.
- 5 Q. WAS THE - WHAT YOU WITNESSED, THE INCIDENT BETWEEN WHEN YOU
- 6 SAW THE DEFENDANT COME UP TO DINAH STEELE AND WHEN YOU SAW WHAT
- 7 EVENTUALLY HAPPENED, WAS YOUR VIEW EVER OBSTRUCTED BY ANYTHING?
- 8 A. WELL, SHE TOLD HER TO GET AWAY FROM HER AND SHE HAD SOME
- 9 PAPERS IN HER HAND AND SHE WAS PUSHING THEM INTO HER CHEST.
- 10 Q. SO WHEN YOU SAY SHE YOU'RE -
- 11 A. DR. FALTAS.
- 12 Q. SO LET'S GO THROUGH THAT AGAIN SO WE JUST CLEAR UP THE RECORD A
- 13 LITTLE BIT.
- 14 A. OKAY.
- 15 Q. WHEN YOU SAY SHE WAS APPROACHING HER, WHO WAS APPROACHING
- 16 WHO?
- 17 A. DR. MARIE FALTAS WAS APPROACHING DINAH STEELE.
- 18 Q. AND THEN WHAT HAPPENED?
- 19 A. BASICALLY SHE TOLD HER TO GET AWAY FROM HER AND SHE WAS
- 20 PUSHING. AS SHE WAS WALKING TOWARDS HER, SHE HAD THE PAPERS AND SHE
- 21 WAS PUSHING THEM IN HER CHEST, YOU KNOW, TRYING I GUESS TO GIVE THEM
- 22 TO HER BUT IN A SENSE SHE WAS PUSHING THE PAPERS IN HER CHEST. AND
- 23 THEN ALL I KNOW THE LAW WAS CALLED.
- 24 Q. THE - HOW WOULD YOU DESCRIBE MS. FALTAS' DEMEANOR? HOW WAS
- 25 SHE ACTING? DID SHE SEEM HOSTILE, DID SHE SEEM CALM, WAS SHE YELLING?

1 COULD YOU DESCRIBE HOW SHE WAS BEHAVING?

2 A. WELL, BASICALLY SHE WAS JUST, YOU KNOW, PUSHING. YEAH, HOSTILE
3 BECAUSE SHE WAS PUSHING THE PAPERS IN DINAH'S CHEST.

4 Q. AND THE PUSH THAT YOU SAY – HOW WAS DINAH REACTING TO THIS?

5 A. SHE KEPT SAYING GET AWAY FROM ME, GET AWAY FROM ME.

6 Q. WAS SHE MOVING BACKWARDS, WAS SHE TRYING TO GET AWAY?

7 A. SHE WAS – YOU KNOW, SHE PUSHED THE PAPERS IN HER CHEST AND SHE
8 WAS JUST – SHE WAS MOVING, YOU KNOW, PUSHING HER BACK AND THEN, YOU
9 KNOW, I WENT INSIDE AND I THINK I CALLED THE POLICE.

10 Q. AND DID DINAH STEELE EVER INITIATE ANY KIND OF COMBAT AGAINST
11 DR. FALTAS?

12 A. NO, SHE JUST TOLD HER TO GET AWAY FROM HER.

13 Q. AND THE PUSHING, DID YOU REGARD THAT AS – WAS IT UNWANTED BY
14 DINAH STEELE?

15 MR. LUPTON: OBJECTION, YOUR HONOR.

16 THE COURT: I WILL SUSTAIN THAT. PLEASE ASK ANOTHER
17 QUESTION.

18 Q. (BY MR. FERNANDEZ) WHAT KIND OF – WOULD YOU CALL IT AGGRESSIVE?
19 HOW WOULD YOU DESCRIBE THE TOUCHING?

20 MR. LUPTON: OBJECTION TO LEADING.

21 MR. FERNANDEZ: WHAT'S THE OBJECTION BASED ON?

22 THE COURT: HE OBJECTED AS TO LEADING. I THINK ULTIMATELY
23 HE ASKED TWO QUESTIONS IN ONE. I THINK HE ULTIMATELY ASKED HER
24 WOULD YOU DESCRIBE IT. PLEASE CLARIFY THE QUESTION.

25 Q. (BY MR. FERNANDEZ) HOW WOULD YOU DESCRIBE THE ACTUAL PUSHING?

1 IF YOU COULD, BE SPECIFIC. HOW WOULD YOU DESCRIBE IT?

2 A. WELL, SHE HAD THE PAPERS LIKE I SAID IN HER HANDS AND SHE WAS
3 PUSHING THEM INTO HER CHEST.

4 Q. WHAT KIND OF FORCE WAS SHE USING?

5 A. SHE WAS FORCING WITH HER HANDS.

6 Q. AND HOW MUCH FORCE WAS BEING APPLIED? WHAT DID YOU NOTICE?

7 A. BASICALLY LIKE I SAID SHE WAS JUST PUSHING THE PAPERS IN, YOU
8 KNOW, IN HER CHEST TRYING TO GIVE IT TO HER INSTEAD OF PUTTING IT IN HER
9 HANDS.

10 Q. AND FROM WHERE THE INCIDENT – WHERE THIS ALTERCATION STARTED
11 AND WHERE IT ENDED, HOW FAR BACK WAS DINAH PUSHED?

12 A. JUST, YOU KNOW, A COUPLE OF STEPS.

13 Q. AND DID DR. FALTAS SAY ANYTHING DURING THIS TIME?

14 A. NO, NOT REALLY. NO.

15 Q. DID SHE APPEAR TO BE AGGITATED?

16 A. WELL, YEAH, 'CAUSE – LIKE I SAID, SHE WAS PUSHING THE PAPERS IN HER
17 CHEST.

18 MR. FERNANDEZ: THANK YOU. THAT'S ALL THE QUESTIONS I
19 HAVE.

20 THE COURT: PLEASE ANSWER ANY QUESTIONS MR. LUPTON MAY
21 HAVE. MR. LUPTON, YOU MAY CROSS IN FULL.

22 MR. LUPTON: THANK YOU, YOUR HONOR.

23 CROSS EXAMINATION BY

24 MR. LUPTON:

25 Q. MS. STEELE WAS BACKING UP AS DR. FALTAS WAS TRYING TO GIVE HER

- 1 THE PAPERS, CORRECT? --
- 2 A. NO, SHE WAS PUSHING THEM INTO HER CHEST. YES, SHE WAS BACKING
3 UP BECAUSE SHE WAS PUSHING THE PAPERS INTO HER CHEST INSTEAD OF
4 PUTTING THEM IN HER HAND.
- 5 Q. SO BASED ON YOUR OBSERVATIONS WAS MS. STEELE TRYING TO -- PRIOR
6 TO THE PUSHING AND PRIOR TO HER -- DR. FALTAS TRYING TO GIVE HER PAPERS,
7 WAS MS. STEELE TRYING TO BACK AWAY FROM HER?
- 8 A. WELL, SHE --
- 9 Q. OR WAS SHE JUST STANDING HER GROUND?
- 10 A. SHE WAS -- I MEAN SHE STOOD RIGHT THERE AND SHE HAD THE PAPERS
11 AND SHE, YOU KNOW, INSTEAD OF GIVING THEM IN HER HAND SHE PUT THEM IN
12 HER CHEST AND SHE WENT BACK A COUPLE OF STEPS AND SHE TOLD HER TO
13 GET AWAY FROM HER AND THEN I WENT IN AND CALLED THE POLICE.
- 14 Q. SO DURING THIS CONFRONTATION MS. STEELE DID NOT BACK AWAY
15 FROM HER?
- 16 A. WELL, SHE KIND OF LIKE PUSHED HER BACK WHEN SHE WAS --
- 17 Q. BUT OTHER THAN THAT, I MEAN SHE DIDN'T COME RUNNING AWAY FROM
18 DR. FALTAS?
- 19 A. WELL, LIKE I SAID, I WENT IN AND CALLED THE POLICE SO ...
- 20 Q. PRIOR TO IT. I MEAN YOU SAW THE WHOLE THING?
- 21 A. YES.
- 22 Q. AND SO SHE WASN'T RUNNING AWAY PRIOR TO HAVING PAPERS GIVEN
23 TO HER?
- 24 A. NO, SHE WAS JUST STEPPING BACK BECAUSE, YOU KNOW, SHE WAS
25 PUSHING THEM IN HER CHEST.

- 1 Q. BUT WAS THE STEPPING BACK BEFORE OR AFTER THE PAPERS?
- 2 A. I MEAN – I GUESS AFTER.
- 3 Q. SO SHE DIDN'T MOVE PRIOR TO THAT?
- 4 A. (INAUDIBLE).
- 5 Q. AND YOU SAID THAT DR. FALTAS WASN'T SAYING ANYTHING. DID SHE
- 6 SAY SOMETHING ABOUT HERE'S THE PAPERS OR YOU GOT IT OR ANYTHING LIKE
- 7 THAT THAT YOU HEARD?
- 8 A. SHE WAS – I CAN'T RECALL WHAT SHE WAS --
- 9 Q. SHE POSSIBLY SAID THAT?
- 10 THE COURT: PLEASE LET HER ANSWER FIRST.
- 11 A. I REALLY CAN'T RECALL WHAT SHE TELLING – SHE WAS TELLING HER
- 12 SOMETHING ABOUT THE PAPERS BUT ALL I KNOW IS WHAT I SAW.
- 13 Q. (BY MR. LUPTON) SHE TOLD HER SOMETHING ABOUT THE PAPERS?
- 14 A. YEAH.
- 15 Q. COULD IT HAVE BEEN YOU'VE GOT IT OR YOU ARE SERVED OR
- 16 SOMETHING OF THAT NATURE?
- 17 A. PERHAPS.
- 18 Q. BUT SHE WASN'T MAKING ANY THREATS, WAS SHE?
- 19 A. NO, SHE DIDN'T MAKE NO THREATS.
- 20 Q. WASN'T SAYING I'M GONNA GET YOU OR I'M GONNA, YOU KNOW –
- 21 ANYTHING LIKE THAT? NO THREATS?
- 22 A. NOT TO MY KNOWLEDGE.
- 23 MR. LUPTON: NOTHING FURTHER, YOUR HONOR.
- 24 THE COURT: YES, SIR.
- 25 MR. FERNANDEZ: NOTHING.

1 THE COURT: YOU MAY STEP DOWN.

2 (WITNESS TO THE SIDE)

3 THE COURT: ANY FURTHER WITNESSES FROM THE STATE?

4 MR. FERNANDEZ: NO, YOUR HONOR. THE CITY RESTS.

5 THE COURT: ALL RIGHT. ANY MOTIONS AT THIS TIME?

6 MR. LUPTON: YOUR HONOR, MOVE FOR A DIRECTED VERDICT
7 BASED ON THE TESTIMONY. IN THE LIGHT MOST FAVORABLE TO THE STATE OR
8 THE CITY IN THIS CASE, I DON'T BELIEVE THAT THE CITY HAS SHOWN THAT AN
9 ASSAULT HAPPENED IN THIS CASE. THIS APPEARS TO HAVE BEEN A SERVING OF
10 PAPERS. THIS WAS NOT A FIGHT IN A PRIVATE OR A PUBLIC PLACE WITHIN THE
11 CORPORATE LIMITS OF THE CITY, NOR WAS THERE ANY INJURY.

12 THE COURT: OKAY. YES, SIR.

13 MR. FERNANDEZ: AND I WOULD JUST ARGUE THE EXACT
14 OPPOSITE, THAT WE DID PROVE THAT THERE WAS AN ASSAULT, CERTAINLY IN
15 THE LIGHT MOST FAVORABLE AT LEAST, BUT THAT WE DID PROVE THERE WAS
16 AN ASSAULT, THAT IT WAS WITHIN THE CITY LIMITS AND THAT BY DEFINITION
17 OF ASSAULT WHICH I DO HAVE A NUMBER OF DEFINITIONS BUT BY DEFINITION
18 IT DOES CERTAINLY QUALIFY.

19 THE COURT: MOTION IS DENIED. ARE YOU READY TO PROCEED,
20 SIR?

21 MR. LUPTON: YOUR HONOR, IF I COULD HAVE A MOMENT AND
22 ALSO ADDITIONALLY AS REQUIRED BY LAW, NOT THAT I'M TRYING TO
23 INFLUENCE ANYBODY, BUT AS THE COURT IS AWARE IT IS REQUIRED BY LAW
24 THAT THE COURT ADVISE A DEFENDANT AT THIS STAGE AS TO THEIR RIGHT TO
25 TESTIFY OR NOT TESTIFY.

1 **THE COURT:** DR. FALTAS, WE'VE DONE THIS ADVICE BEFORE. AS
2 YOU ARE AWARE, YOU HAVE A RIGHT NOT TO TAKE THE STAND. THAT CANNOT
3 BE CONSIDERED AGAINST YOU. YOU HAVE A RIGHT TO REMAIN SILENT. THE
4 CHARGES STILL HAVE TO BE PROVED AGAINST YOU BEYOND A REASONABLE
5 DOUBT. IF THE CITY FAILS TO DO THAT EVEN IF YOU DON'T TESTIFY, YOU ARE
6 PRESUMED INNOCENT AND A NOT GUILTY VERDICT WOULD BE ENTERED. IF
7 YOU CHOOSE TO TESTIFY THEN YOU SUBJECT YOURSELF TO CROSS
8 EXAMINATION. YOU ALSO LOSE THE RIGHT TO HAVE LAST ARGUMENT AS YOU
9 WILL HAVE PLACED EVIDENCE INTO THE RECORD ON THE DEFENDANT'S CASE.
10 SO YOU HAVE THE RIGHT TO REMAIN SILENT AND THE RIGHT NOT TO TESTIFY.
11 WHETHER OR NOT YOU TESTIFY IS YOUR CHOICE AND YOU SHOULD CONSIDER
12 THAT BASED UPON ANY ADVICE GIVEN YOU BY COUNSEL BUT YOU ULTIMATELY
13 MAKE THAT DECISION. ANYTHING FURTHER, COUNSEL, YOU NEED ON THAT
14 POINT?

15 **MR. FERNANDEZ:** NO, YOUR HONOR. THANK YOU.

16 **THE COURT:** AND HOW LONG DO YOU NEED BEFORE YOU ARE
17 PREPARED TO GO FORWARD?

18 **MR. LUPTON:** YOUR HONOR, IF WE COULD JUST HAVE A FEW
19 MINUTES THAT WE CAN DISCUSS WHETHER OR NOT SHE WANTS TO TESTIFY AND
20 DISCUSS THAT PROCESS.

21 **THE COURT:** WE WILL ADJOURN UNTIL 12:25 PURSUANT TO THE
22 CLOCK IN THE COURTROOM.

23 **MR. LUPTON:** THANK YOU, YOUR HONOR.

24 **MR. FERNANDEZ:** THANK YOU, YOUR HONOR.

25 (RECESS)

1 (COURT RESUMES)

2 MR. LUPTON: YOUR HONOR, WE ARE READY. DR. FALTAS WOULD
3 LIKE TO TESTIFY; HOWEVER, WE ARE MISSING – UNLESS YOU WANT TO PROCEED
4 WITHOUT THEM.

5 MR. FERNANDEZ: THEY WERE IN THE RESTROOM THE LAST I SAW.
6 THEY WENT TO THE RESTROOM.

7 THE COURT: WELL, LET'S GIVE DR. FALTAS – WELL, LET'S DO THIS
8 SINCE WE ARE IN A BENCH TRIAL WE ARE MORE RELAXED. SINCE SHE HAS A
9 KNEE ISSUE, IS IT APPROPRIATE FOR HER TO TESTIFY FROM WHERE SHE SITS?
10 WHAT DO YOU WANT TO DO?

11 MR. LUPTON: WE WERE GOING TO ASK PERMISSION FROM THE
12 COURT TO HAVE HER TESTIFY FROM WHERE SHE SITS, YOUR HONOR.

13 THE COURT: THAT IS GRANTED.

14 MR. LUPTON: AND ALSO WHILE WE ARE WAITING SHE HAS
15 MARKED THIRTY-ONE EXHIBITS I'LL HAND UP TO THE COURT.

16 THE COURT: LET MR. FERNANDEZ SEE THEM.

17 MR. LUPTON: CERTAINLY. THEY ARE ALL ... THESE ARE
18 PICTURES THAT SHE WOULD LIKE TO INTRODUCE AND PURSUANT TO THE
19 COURT'S ORDER THAT SHE CAN SUBMIT EVIDENCE SUBJECT TO THE RULES OF
20 EVIDENCE SHE IS DOING THAT.

21 THE COURT: NOT A PROBLEM.

22 MR. FERNANDEZ: I GUESS WHEN YOU MOVE TO PUT THEM INTO
23 EVIDENCE I'LL TAKE THAT UP I GUESS.

24 THE COURT: LET ME TAKE A LOOK AT THEM IF YOU DON'T MIND.
25 DO YOU HAVE ANY OBJECTION TO THEM? I KNOW YOU DON'T KNOW HOW THEY

1 ARE GOING TO BE USED.

2 MR. FERNANDEZ: I DON'T KNOW HOW THEY ARE GOING TO
3 PRESENT IT. I DON'T KNOW WHAT THEY PURPORT TO OFFER TO SHOW SO I
4 RESERVE A RIGHT TO OBJECT TO THEM BUT I DO RECOGNIZE THE AREA AT
5 LEAST THAT IT APPEARS TO BE.

6 THE COURT: ARE THEY ALL MARKED FOR IDENTIFICATION
7 PURPOSES?

8 MR. LUPTON: YOUR HONOR, THEY ARE MAKED DEFENSE ONE
9 THROUGH THIRTY-ONE. YOUR HONOR, CONSIDERING THAT THIS IS A BENCH
10 TRIAL AND THE COURT DOES HAVE DISCRETION AND THE ABILITY TO SORT
11 THROUGH WHAT IS RELEVANT AND IRRELEVANT AND SINCE IT IS AGREED THAT
12 THEY ARE ALL OF THE AREA AND GENERALLY THE PEOPLE INVOLVED, I WOULD
13 MOVE THEM INTO EVIDENCE FOR WHATEVER THEY ARE WORTH. SUBJECT TO
14 ANY TESTIMONY BASED ON THEM THAT THE CITY FINDS OBJECTIONABLE, THEY
15 OBVIOUSLY PRESERVE THAT RIGHT TO OBJECT.

16 MR. FERNANDEZ: AND I CAN AGREE. I THINK GIVEN THE FACT
17 IT'S A BENCH TRIAL AND YOUR HONOR IS ABLE TO SIFT THROUGH THE
18 RELEVANT AND IRRELEVANT I THINK WE CAN AGREE WITH THAT.

19 THE COURT: ALSO ADMITTED.

20 (PHOTOGRAPHS ARE RECEIVED INTO EVIDENCE AS DEFENDANT'S
21 EXHIBITS #1 THROUGH #31.)

22 DEFENDANT FALTAS: AT THIS POINT, MAY I JUST MAKE MY
23 ANDERS ARGUMENT THAT THE LAST ARGUMENT RULE SHOULD BE CHANGED
24 BASED ON HOLMES VS. SOUTH CAROLINA, A U.S. SUPREME -

25 THE COURT: WE ARE NOT GOING TO ADDRESS ANY LAST ARGU-

1 MENTS AT THIS POINT. WE ARE GOING TO TAKE TESTIMONY.

2 DEFENDANT FALTAS: THANK YOU.

3 MARIE-THÉRÈSE ASSA'AD-FALTAS, AFTER BEING DULY SWORN

4 BY THE COURT, TESTIFIES AS FOLLOWS:

5 THE COURT: THANK YOU VERY MUCH. MR. LUPTON, YOU
6 WITNESS.

7 MR. LUPTON: YOUR HONOR, WITH THE COURT'S PERMISSION, I
8 HAVE GIVEN HER THE EXHIBITS THAT SHE CAN REFER TO.

9 THE COURT: THAT IS FINE. ALL I ASK, BECAUSE I SEE OTHER
10 THINGS IN FRONT OF HER, IS THAT IF SHE IS GOING TO PROVIDE INFORMATION
11 OR REFER TO ANYTHING THAT IS NOT ADMITTED INTO EVIDENCE THAT WE GET
12 A STICKER ON IT AND THAT WE HAVE WHATEVER ARGUMENTS NECESSARY ON
13 ITS RELEVANCY, AUTHENTICITY, ET CETERA, AND SO WE KNOW WHEN WE
14 LEAVE HERE TODAY THAT EVERYTHING WE TALKED ABOUT IS IN THE RECORD.

15 MR. LUPTON: YOUR HONOR, I HAVE CLEARED A SPACE ON THE
16 DESK AND I'M GOING TO ASK HER TO KEEP THE EXHIBITS IN THAT CLEAR SPACE
17 AND KEEP ALL OTHER ITEMS OUTSIDE OF THAT CLEAR SPACE.

18 THE COURT: THANK YOU, SIR. YOUR WITNESS.

19 DIRECT EXAMINATION BY

20 MR. LUPTON:

21 Q. DR. FALTAS, COULD YOU PLEASE TELL THE COURT WHO YOU ARE?

22 A. I'M MARIE-THÉRÈSE (INAUDIBLE) ASSA'AD-FALTAS. I AM M.D. AND
23 M.P.H. I'M A COPTIC ORTHODOX CHRISTIAN AND I ALSO SPEAK FOUR
24 LANGUAGES. I'M THE FIRST BORN TO MY PARENTS. I HAVE TWO SISTERS WHO
25 ARE ALSO PHYSICIANS. THEY ARE MARRIED TO PHYSICIANS. I BASICALLY HAVE

1 LIVED MY LIFE AS A NUN EVEN THOUGH NOT IN A CONVENT. USUALLY NUNS IN
2 A CONVENT WEAR A WEDDING BAND BECAUSE THEY ARE THE BRIDES OF
3 CHRIST. THIS IS MY LATE FATHER'S WEDDING BAND AND IT'S ATTACHED TO A
4 RING OF MY SIZE BECAUSE AFTER HE DIED MOTHER GAVE IT TO ME AND GAVE
5 HIS POCKETWATCH TO MY OLDEST NEPHEW AND I DIDN'T WANT MY FATHER'S
6 WEDDING BAND ALTERED IN ANY WAY, DOWNSIZED FOR MY FINGER SO IT IS
7 ATTACHED TO A SMALLER RING WITH (INAUDIBLE) SYMBOLIZING THE THREE OF
8 (INAUDIBLE).

9 Q. AND YOU TALKED ABOUT BEING A DOCTOR. EXPLAIN TO THE COURT ARE
10 YOU A MEDICAL DOCTOR, AND BRIEFLY WHAT TRAINING DO YOU HAVE FOR
11 THAT?

12 A. OKAY. I GRADUATED WITH HONORS FROM AIN SHAMS UNIVERSITY
13 SCHOOL OF MEDICINE IN CAIRO, EGYPT IN JULY, 1977. AT THAT TIME I WAS
14 TWENTY-FOUR. CAN YOUR HONOR HEAR ME?

15 THE COURT: YES, MA'AM, I CAN.

16 A. THANK YOU. AND I WAS THE YOUNGEST IN MY GRADUATING CLASS. I
17 DID NOT REALLY GO TO COLLEGE. I WENT STRAIGHT FROM HIGH SCHOOL TO
18 MEDICAL SCHOOL. IN MY DAYS THERE WAS A YEAR OF PRELIMINARY NATURAL
19 SCIENCES BETWEEN HIGH SCHOOL AND MEDICAL SCHOOL PROPER. AND SO IN
20 1970 I WAS ONE OF THE HUNDRED HIGH SCHOOL SCHOLARS IN ALL THE
21 COUNTRY OF EGYPT AND, YOUR HONOR, THAT WASN'T A SMALL TEST. IT'S A
22 FIFTEEN DAY EXAM STARTING WITH ARABIC LITERATURE, ENGLISH
23 LITERATURE, FRENCH LITERATURE, ADVANCED GEOMETRY, ADVANCED
24 ALGEBRA, ADVANCED CALCULUS, ADVANCED MECHANICS.

25 Q. ALL RIGHT. BUT -

1 A. -- ADVANCED PHYSICS, ADVANCED CHEMISTRY AND ADVANCED BIOLOGY
2 AND ADVANCED SOCIOLOGY.

3 Q. WITH REGARDS TO YOUR MEDICAL TRAINING.

4 A. YES, I HAD TWO YEARS OF ANATOMY PHYSIOLOGY, BIOCHEMISTRY,
5 HISTOLOGY AND PSYCHOLOGY. THEN I HAD ONE YEAR OF PATHOLOGY,
6 PHARMACOLOGY, PARASITOLOGY, AND MICROBIOLOGY.

7 Q. DID YOU RECEIVE A MEDICAL --

8 A. THEN I HAD THREE YEARS OF FORENSIC MEDICINE AND TOXICOLOGY,
9 PUBLIC HEATH AND INDUSTRIAL MEDICINE, OB-GYN, OPHTHAMOLOGY,
10 PEDIATRICS, INTERNAL MEDICINE AND SURGERY.

11 Q. AND DID YOU RECEIVE A MEDICAL DEGREE?

12 A. WHAT IS CALLED IN EGYPT IS M.B.B.C.H. WHICH IS MEDICINE, BACHELOR,
13 BACHELOR OF CHIRURGIA, AND I DID ONE YEAR OF ROTATING INTERNSHIP
14 AFTER THAT AND ONE YEAR OF SERVICE IN A COMMUNITY HEALTH. THEN I WAS
15 CHOSEN BY THE FULBRIGHT COMMISSION FOR FULBRIGHT EXPEDITED SUBSET
16 OF THE FULBRIGHT SCHOLARSHIPS THAT PRESIDENT CARTER WANTED AFTER
17 THE PEACE ACCORD BETWEEN EGYPT AND ISRAEL AND I WENT TO CHAPEL HILL
18 WHERE I GOT MY M.P.H. AFTER I GOT MY M.P.H. --

19 Q. WHAT IS M.P.H.?

20 A. MASTER'S OF PUBLIC HEALTH. AND AFTER THAT I TOOK AND PASSED ALL
21 THE REQUIRED MEDICAL EQUIVALENCY EXAMINATIONS, THE E.C.F.M.G. WHICH
22 IS THE EDUCATIONAL COMMISSION FOR FOREIGN MEDICAL GRADUATES EXAM.
23 THE V.Q.E. WHICH IS THE VISA QUALIFYING EXAM. NOW THEY'VE COMBINED
24 THEM AND THE F.L.E.X. WHICH IS THE FEDERAL LICENSING EXAM. SO UPON MY
25 HAVING TAKEN THOSE EXAMS AND HAVING DONE RESIDENCES IN THE UNITED

1 STATES I OBTAINED A PERMANENT NON-RESTRICTED LICENSE TO PRACTICE
2 MEDICINE IN VIRGINIA. I HAVE A PERMANENT NON-RESTRICTED LICENSE TO
3 PRACTICE MEDICINE AND SURGERY IN EGYPT AND (INAUDIBLE) MEDICINE AND
4 SURGERY IN VIRGINIA. ALSO THROUGH MY TRAINING I HAVE HELD TEMPORARY
5 LICENSES IN SOUTH CAROLINA, NORTH CAROLINA, ILLINOIS AND ARKANSAS
6 BUT NOT IN THAT ORDER.

7 Q. AND WITH REGARDS TO THE EVENTS OF SEPTEMBER 11TH, 2009.

8 A. OKAY. FIRST –

9 Q. TELL THE COURT, PLEASE, WHAT HAPPENED.

10 A. OKAY. WHAT HAD HAPPENED IS THE FOLLOWING: IN SEPTEMBER, 2008, I
11 RENTED THE APARTMENT FROM DINAH STEELE AND LARRY MASON WAS THERE.
12 AND THERE WERE PROBLEMS WITH IT AND IN DECEMBER, 2008, THEY WANTED
13 TO COME IN AND FIX SOME THINGS AND SHE TESTIFIED THAT I DIDN'T GIVE
14 THEM ANY PROBLEMS COMING IN AND FIX ANYTHING. AND THEN LATER IN THE
15 MONTH OF DECEMBER THEY PUT A FRUIT BASKET –

16 MR. FERNANDEZ: YOUR HONOR, I KNOW THIS IS A BENCH TRIAL. I
17 UNDERSTOOD THE PARAMETERS WOULD BE ABOUT WHAT HAPPENED ON THAT
18 DAY. ARE WE GOING TO RELAX THOSE BECAUSE IT'S A BENCH TRIAL SO I KNOW
19 WHETHER OR NOT I'M OBJECITNG OR NOT.

20 THE COURT: MR. LUPTON.

21 MR. LUPTON: I HAVE ASKED HER WHAT HAPPENED THAT DAY. I
22 UNDERSTAND THE COURT RELAXED THAT SOMEWHAT. I WOULD ASK HER TO
23 COME TO THE POINT OF SEPTEMBER 11, 2009.

24 MR. FERNANDEZ: AND IF WE WANT TO – JUST SO I KNOW WHAT
25 WE ARE LIMITING TESTIMONY TO, I KNOW IT'S A BENCH TRIAL SO I UNDER-

1 STAND. FOR JUDICIAL ECONOMY OR FOR JUST SO I UNDERSTAND IF I SHOULD BE
2 OBJECTING OR NOT.

3 THE COURT: WE'LL DO THIS. YOU OBJECT WHERE YOU DEEM IT
4 APPROPRIATE. I AM GOING TO GIVE HER MORE LATITUDE IF SHE WANTS TO GIVE
5 SOME LEAD-UP WE'LL GIVE HER SOME ROOM TO DO THAT.

6 MR. LUPTON: AND I WILL NOTE FOR THE RECORD THAT THE
7 CITY'S WITNESSES DID GO INTO STUFF OTHER THAN THE EVENTS OF THAT DAY.

8 THE COURT: WE'VE ALLOWED HER TO DO IT SO LET'S DO IT.

9 A. I-

10 Q. (BY MR. LUPTON) COMING TO THE POINT ABOUT SEPTEMBER 11TH.

11 A. OKAY. BUT SHE SAID THAT I HAD BEEN CALLING THE POLICE EVERY
12 TIME. THAT IS ABSOLUTELY NOT TRUE. WHAT HAD HAPPENED IS THAT IN
13 DECEMBER SHE PUT A FRUIT BASKET IN FRONT OF MY APARTMENT DOOR AND
14 THEN ACTUALLY I RAN INTO CHARLENE CROUCH AND I DIDN'T KNOW IF THEY
15 JUST PUT IT FOR ME OR FOR EVERYBODY AND I WAS CURIOUS AND I SAID I HOPE
16 THEY AREN'T GOING TO GO OVER THE RENT -- TO INCREASE THE RENT BECAUSE
17 THEY GIVE US A FRUIT BASKET. AND SHE SAID, YEAH, I DON'T WANT TO BE
18 PAYING MORE THAN THREE HUNDRED. SOMETHING IN THAT NEIGHBORHOOD,
19 THREE HUNDRED. I SAID WHAT IS YOUR RENT, THREE HUNDRED FIFTY OR ...

20 A. SHE SAID, YES. WHY, ARE YOU PAYING MORE? I SAID, YES, I AM PAYING
21 FIVE HUNDRED FIFTY. SO THAT WAS THE FIRST AND I HAD MADE
22 ARRANGEMENTS FOR -

23 Q. COMING TO THE RELEVANCE TO SEPTEMBER 11TH.

24 A. FIRST OF ALL, SHE SAID THAT IT HAD TO GO THROUGH HER LAWYER.
25 THAT'S NOT THE CASE. MOTHER AND I BOUGHT THIS LAND NEXT DOOR AND I

1 THINK YOUR HONOR REMEMBERS THE SEWER LINE ISSUE. WHEN I FOUND OUT
 2 THAT SHE WAS CHARGING ME MORE, INITIALLY I REDUCED THE RENT BECAUSE I
 3 WAS PAYING NOT BY CHECK, BUT BY BANK TRANSFER, DIRECT PAYMENT.
 4 BECAUSE I FELT IT WAS INSULTING THAT I WOULD BE PAYING FIVE HUNDRED
 5 FIFTY WHEN OTHERS ARE PAYING THREE HUNDRED FIFTY FOR AN IDENTICAL
 6 APARTMENT. AND SHE CALLED ME AND WAS VERY RUDE BUT I DIDN'T DO
 7 ANYTHING BECAUSE I WAS TRYING FOCUSED ON GETTING THAT LAND AND
 8 GETTING THAT SPECIAL EXCEPTION. SO I DIDN'T CALL THE POLICE AT ALL. THE
 9 ONLY TIME THAT THE POLICE WAS CALLED BEFORE MOTHER AND I BOUGHT
 10 THAT LAND WAS AT THE TIME THERE WAS AN ABANDONED VEHICLE NOT EVEN
 11 IN THIS TWO QUADRIplexES, ON OTHER LAND, AND AFTER TWO, THREE DAYS
 12 BECAUSE IT LOOKED LIKE THE DEPARTMENT OF TRANSPORTATION AND I DIDN'T
 13 KNOW IF SOMEONE, YOU KNOW, WAS THERE COMMITTED SUICIDE OR
 14 SOMETHING.

15 Q. RELATED TO SEPTEMBER 11TH, 2009.

16 A. THEN THE ONLY OTHER POLICE WAS WHEN THE NEIGHBOR CALLED
 17 TERESA INGRAM. SHE HAD A BOYFRIEND WHO WAS THREATENING TO KILL HER
 18 -

19 MR. FERNANDEZ: OBJECTION, YOUR HONOR. RELEVANCE. THEY
 20 INVOLVE PARTIES THAT AREN'T EVEN PRESENT TODAY.

21 THE COURT: I UNDERSTAND. I THINK I'M JUST GOING TO ALLOW
 22 IT AND HOPEFULLY WE'LL BE GETTING TO 2009.

23 A. YES, VERY QUICKLY, YOUR HONOR, BECAUSE SHE LIED.

24 THE COURT: DON'T EXPLAIN. JUST PLEASE TELL US.

25 A. ALL RIGHT. ALL RIGHT. ALL RIGHT. SO THEN BEFORE THAT ON

1 FEBRUARY -- AROUND FEBRUARY 14TH, 2009, THE POLICE CAME AND THEY WERE
 2 UNDER MY DOOR, UNDER MY WINDOW AND TERESA INGRAM WHO IS IN THE
 3 NEXT BUILDING WAS TALKING TO THEM. SO THE NEXT DAY DINAH STEELE AND
 4 LARRY MASON WERE THERE AND IT WAS THE WEEKEND, MAYBE (INAUDIBLE)
 5 AND THEY WERE WORKING ON THE LOCK OF THE OTHER BUILDING, OF [REDACTED] AND
 6 THEY WERE DRESSED BETTER THAN WORK CLOTHES. AND I SAID -- THEY EVEN
 7 VOLUNTEERED. THEY SAID WE ARE GOING TO A BOAT SHOW AND I SAID YOU
 8 LOOK SHARP. THEY SAID WE ARE GOING TO A BOAT SHOW. I SAID, WELL, WHY
 9 DID YOU COME HERE ON A WEEKEND. THEY SAID WE ARE CHANGING THE LOCK
 10 BECAUSE TERESA INGRAM HAD -- I DON'T KNOW IF THEY SAID NICKIE BUT SHE
 11 HAD GIVEN HER BOYFRIEND THE CODE AND NOW WE NEED TO CHANGE THE
 12 CODE.

13 Q. (BY MR. LUPTON) CONCERNING SEPTEMBER 11TH --

14 A. THEN ON MARCH 3RD MOTHER AND I CLOSED ON THE --

15 THE COURT: THIS WOULD BE 2009?

16 A. YES, YOUR HONOR.

17 THE COURT: OKAY. MARCH 3RD, 2009?

18 A. YES. MOTHER AND I, MARCH OF 2009, MOTHER AND I, MEANING I ACTING
 19 AS HER POWER OF ATTORNEY, WE BOUGHT THAT LAND NEXT DOOR AND AFTER
 20 I HAD GOTTEN AN EXCEPTION, A SPECIAL EXCEPTION, FROM THE BOARD OF
 21 ZONING AND APPEALS ON IT, AND THEN WE SUBDIVIDED IT FROM THE PREVIOUS
 22 LOT THAT HAD NOTHING TO DO WITH THEM. AND THEN IT WAS REGISTERED ON
 23 MARCH 6TH AND ON MARCH 7TH I HIRED PEOPLE BECAUSE THE GRASS WAS LIKE --
 24 IT WASN'T EVEN GRASS, IT WAS A JUNGLE. TOTAL SHRUB, TREES, HORRIBLE
 25 AND THE PICTURE IS IN THE COURT'S RECORD FROM THE (INAUDIBLE) IN THIS

1 CASE. SO I BROUGHT PEOPLE TO TAKE OUT THIS HIGH VEGETATION BECAUSE IT
2 WASN'T POSSIBLE TO DO IT EXCEPT WITH A TRACTOR AND A BACKHOE. THEY
3 HAD TO SCRAP THE AND WITH THE VEGETATION ON IT. AND ONE NEIGHBOR,
4 JOHN MITCHELL JONES, MITCH JONES, SAID WHAT'S GOING ON. I SAID I BOUGHT
5 THAT LAND. HE SAID WHEN DO YOU START BUILDING.

6 MR. FERNANDEZ: YOUR HONOR, I --

7 THE COURT: DR. FALTAS, I'VE TRIED TO GIVE YOU A LOT OF
8 LENIENCY BUT WE'VE ONLY GOTTEN TO MARCH AND THIS IS A SEPTEMBER
9 EVENT. PLEASE TRY TO --

10 A. WE'LL HAVE JUMPED FROM MARCH --

11 THE COURT: AND TO THE EXTENT YOU CAN DON'T TELL US WHAT
12 OTHER PEOPLE SAID WHO AREN'T HERE.

13 A. ALL RIGHT. FINE. OKAY. SO MARCH 12TH, 2009, DINAH STEELE SHOWS UP
14 AS SOON AS SOMEBODY HAS REASON TO KNOW THAT I BOUGHT THAT LAND
15 AND SHE GOES BALLISTICS. AND THEN HER CONSORT, LARRY MASON, CALLS ME
16 BY PHONE AND SAYS I'LL GET YOU DEPORTED, YOU GO BACK TO WHERE YOU
17 CAME FROM, YOU EGYPTIAN BITCH, YOU ARE A PIECE OF SHIT LIKE OBAMA, ALL
18 KINDS OF THINGS AND I WAS BATTERED. I SAID WHY ARE YOU UPSET. THIS
19 DOESN'T BELONG TO YOU, I AM NOT GOING TO BUILD A RENTAL AND SHE SAID
20 I'M GOING TO GET YOUR SPECIAL EXCEPTION REVOKED, I AM GOING TO
21 PROTEST YOUR BUILDING. SO -- AND THEN THEY CAME AT 10:30 THAT NIGHT,
22 MARCH 12TH, 2009, AND KNOCKED VERY, VERY HARD ON MY DOOR. SO THAT
23 WAS THE FIRST TIME I CALLED THE POLICE, NOT ON THEM BUT SOMEBODY WAS
24 KNOCKING ON MY DOOR AT 10:30 AT NIGHT. AND THEN THE POLICE CAME.
25 THEY SAID THERE IS A LETTER. I SAID YOU OPEN IT. I DON'T KNOW IF IT HAS

1 ANTHRAX OR WHAT. SO THE POLICE OPENED IT. SO THAT WAS THE FIRST TIME.
2 THEN ON MARCH 14TH, 2009, BECAUSE ON THAT LAND I FOUND A RUSTED AND
3 TOTALLY NEGLECTED PIECE OF WOOD TURNED OUT TO BE AN ADDRESS SIGN SO
4 THEY HAD IT PLANTED, THE PEOPLE WHO DID THE LAND MOVING, THEY
5 PLANTED IT ON THE 13TH AND I WENT AND BOUGHT NUMBERS, YOU KNOW -

6 Q. (BY MR. LUPTON) ALL RIGHT. IN -

7 A. LIGHT REFLECTIVE NUMBERS AND THEN ON MARCH 14, 2009, LARRY
8 MASON AND DINAH STEELE WERE THERE TRYING TO COLLECT PETITIONS FROM
9 THE NEIGHBORS SO I DON'T BUILD. SO THEY TELL ME -

10 Q. ARE YOU TRYING TO SAY THAT THIS IS RELATED TO GRIEVANCES THEY
11 HAVE AGAINST YOU AND THAT IT'S MOTIVE --

12 A. NO, NO, NO. THEY HAVE NO GRIEVANCES AGAINST ME. WHAT THEY
13 WERE WANTING IS TO STEAL MY LAND. SO THEY SAID WE ARE GOING TO HAVE
14 YOU ARRESTED.

15 MR. FERNANDEZ: YOUR HONOR, I OBJECT TO THE
16 CHARACTERIZATION. YOU KNOW, THIS IS WHY WE HAD THE BOUNDARIES SET
17 IN PLACE BECAUSE -

18 A. ALL RIGHT. FINE. FINE.

19 THE COURT: DR. FALTAS, LET ME FINISH HIS OBJECTION. NOW HE
20 GETS TO OBJECT AND I GET TO RULE AND YOU GET TO TESTIFY. WE'VE ALL GOT
21 OUR ROLES.

22 MR. FERNANDEZ: I APPRECIATE THAT IT'S A BENCH TRIAL BUT WE
23 ARE NOT EVEN REMOTELY CLOSE TO WHY WE ARE HERE TODAY. I MEAN WE
24 ARE NOT EVEN -

25 THE COURT: THANK YOU, MR. FERNANDEZ. DR. FALTAS, I WOULD

1 LIKE YOU TO COME TO THE FACTS OF WHAT OCCURRED AROUND SEPTEMBER
2 11TH, 2009.

3 A. OKAY. OKAY. BEFORE THAT -

4 Q. (BY MR. LUPTON) DR. FALTAS, IS IT YOUR TESTIMONY THAT EVENTS THAT
5 HAPPENED PRIOR TO SEPTEMBER, 2009, BETWEEN MARCH AND SEPTEMBER THAT
6 YOU BELIEVE THAT MS. STEELE IN THIS CASE HAS MOTIVE AGAINST YOU
7 BECAUSE OF YOU BUYING THE LAND NEXT DOOR?

8 A. ABSOLUTELY. NOT ONLY THAT, SHE STARTED AN EVICTION CASE
9 AGAINST ME ON APRIL 1ST, 2009.

10 Q. AND YOU BELIEVE IT'S BECAUSE YOU BOUGHT THE LAND, IS THAT
11 CORRECT?

12 A. YES, DEFINITELY. ALSO -

13 Q. AND THAT'S BECAUSE IT TURNED OUT THAT THEY HAD A SEWER DRAIN
14 THAT WAS GOING ACROSS THAT LAND?

15 A. YES. NOT ONLY THAT BUT ALSO THEIR BUILDING IS NOT SET BACK FIVE
16 FEET FROM THE PROPERTY LINE.

17 Q. SO YOU BELIEVE THAT PROVIDES MOTIVE FOR WHY SHE'S ACCUSING YOU
18 OF ASSAULT?

19 A. BUT LET ME ALSO TELL YOU THAT WHEN SHE SAID THAT SHE WILL GET
20 MY SPECIAL EXCEPTION REVOKED I FILED A CIVIL LAWSUIT AGAINST HER. THE
21 CIVIL LAWSUIT WAS PRESENTED BY A LAWYER WHO WORKS FOR HER
22 INSURANCE COMPANY. SHE HAS LANDLORD INSURANCE AND THAT LAWYER
23 SAID ABSOLUTELY POSITIVELY -

24 MR. FERNANDEZ: OBJECTION, HEARSAY.

25 THE COURT: THAT IS GRANTED. I MEAN HE'S NOT HERE TO

1 TESTIFY. YOU CAN'T JUST TELL US WHAT OTHER PEOPLE SAID.

2 A. ALL RIGHT. CAN I SAY THAT I WAS TOLD TO LIMIT MY INTERACTIONS
3 WITH HIM TO THE CIVIL CASE BUT THE LANDLORD-TENANT RELATIONSHIP. AND
4 THE EVICTION CASE THERE WAS NO LAWYER INVOLVED.

5 Q. (BY MR. LUPTON) LET ME ASK YOU THIS. DID YOU HAVE CONVERSATIONS
6 WITH A LAWYER RELATED TO A CIVIL CASE YOU WERE ENGAGED IN PRIOR TO
7 SEPTEMBER 11, 2009? JUST YES OR NO.

8 A. YES.

9 Q. AND BASED UPON THOSE CONVERSATIONS WAS IT YOUR
10 UNDERSTANDING THAT YOU WERE NOT TO PROVIDE THAT LAWYER WITH
11 DOCUMENTATION FOR ANYTHING OTHER THAN CIVIL SUIT?

12 A. IN NO UNCERTAIN TERMS, YES.

13 Q. SO WAS IT YOUR BELIEF AND UNDERSTANDING BASED ON YOUR
14 CONVERSATION WITH THAT LAWYER THAT A PROTEST TO THE ENTRY INTO
15 YOUR APARTMENT NOT RELATED TO THAT CIVIL SUIT THAT IT WOULD BE
16 INAPPROPRIATE TO SERVE THE LAWYER?

17 A. NOT ONLY INAPPROPRIATE, I HAD ASKED HIM IF HE WOULD TAKE IT AND
18 GIVE IT TO THEM, IF I COULD FAX IT TO HIM AND HE SAID, NO, ABSOLUTELY
19 NOT. THAT'S BEYOND HIS CONTRACT.

20 MR. FERNANDEZ: OBJECTION. HEARSAY AGAIN.

21 Q. (BY MR. LUPTON) BASED UPON YOUR CONVERSATIONS WAS IT YOUR
22 BELIEF THAT BASED ON WHAT HE SAID TO YOU, WITHOUT GOING INTO WHAT HE
23 SAID, THAT YOU COULD NOT SERVE HER THROUGH HIM, THAT SUCH SERVICE
24 WOULD BE INEFFECTIVE?

25 A. NOT ONLY INEFFECTIVE, IT WOULD HAVE ASKED HIM TO DO A CONFLICT

-1 BECAUSE HE'S HIRED BY THE INSURANCE COMPANY AND HE HAD MADE IT SO
2 CLEAR TO ME.

3 Q. SO NOW GETTING TO SEPTEMBER 11TH -

4 A. REMEMBER, BEFORE THAT SHE TRIED TO GET ME ARRESTED FOR
5 TRESPASS AND THE JURY DIDN'T BELIEVE HER.

6 Q. NOW YOU RECEIVED NOTICE FROM MS. STEELE -

7 A. UH-HUH.

8 Q. THAT SHE WANTED TO COME INTO YOUR APARTMENT TO DO SOME SORT
9 OF INSPECTION -

10 A. WHICH SHE HAD NEVER DONE BEFORE AND ALL THE NEIGHBORS WERE
11 TELLING ME IT'S JUST BECAUSE SHE'S -

12 MR. FERNANDEZ: OBJECTION. HEARSAY.

13 A. ALL RIGHT. CHARLENE CROUCH TOLD ME.

14 Q. (BY MR. LUPTON) HAD SHE EVER GONE INTO YOUR APARTMENT BEFORE
15 FOR INSPECTION?

16 THE COURT: I OVERRULE IT. PLEASE REPHRASE THE QUESTION.

17 Q. (BY MR. LUPTON) HAD SHE GONE INTO YOUR APARTMENT BEFORE FOR AN
18 INSPECTION?

19 A. NOT REGULAR INSPECTION (INAUDIBLE).

20 Q. NOW -

21 A. THAT WAS A PRETEXT AND THE LETTER THAT THEY SENT ME BEFORE
22 THEY SAID WE ARE GOING TO COME INTO YOUR APARTMENT AND PHOTOGRAPH
23 EVERYTHING ON IT. BEFORE THAT WHEN I HAD THE LEASE WITH THEM I SAID
24 THERE IS SOMETHING THAT IS A DEAL BREAKER. THE LEASE HAS TO SAY IN
25 ADDITION TO WHATEVER LANGUAGE THAT YOU CANNOT COME IN MY APART-

1 MENT IN MY ABSENCE.

2 Q. DID YOU – YOU GOT NOTICE THAT THEY WANTED –

3 A. FIRST, THEY WANTED TO COME ON LABOR DAY.

4 Q. ALL RIGHT. THAT WAS RESCHEDULED AND IT WAS – I BELIEVE IT WAS
5 SUPPOSED TO BE ON SEPTEMBER 14TH, IS THAT CORRECT?

6 A. AND SEPTEMBER 14TH WASN'T GOING TO WORK FOR ME BECAUSE I HAD A
7 BRIEF DUE AT THE COURT OF APPEALS ON ANOTHER MATTER THAT DAY.

8 Q. ALL I'M ASKING IS THERE WAS A DATE SCHEDULED THAT DID NOT WORK
9 FOR YOU AND YOU WANTED IT CHANGED, CORRECT?

10 A. ABSOLUTELY.

11 Q. AND DID YOU TYPE UP A NOTICE PROTESTING THEM COMING IN ON THE
12 DATE THAT THEY HAD PICKED?

13 A. YES.

14 Q. AND DID YOU TRY AND GIVE THAT TO MS. STEELE?

15 A. I VERY – FIRST, I HAD MAILED HER A COPY BUT THEN BECAUSE THEY HAD
16 LIED BEFORE MANY, MANY TIMES I KNEW THAT THEY WERE GOING TO PRETEND
17 THAT SHE DID NOT GET IT.

18 Q. YOU WERE CONCERNED THAT SHE WOULD DENY RECEIVING IT IF YOU
19 DID NOT GIVE IT TO HER PERSONALLY? IS THAT YOUR TESTIMONY?

20 A. ABSOLUTELY. ABSOLUTELY.

21 Q. SO YOU WERE TRYING TO GIVE IT TO HER PERSONALLY ON SEPTEMBER
22 11TH, IS THAT CORRECT?

23 A. YES. IN FACT –

24 Q. AND ON SEPTEMBER 11TH, CAN YOU DESCRIBE TO THE COURT WHAT YOU
25 DID IN ORDER TO SERVE THIS DOCUMENT?

1 A. OKAY. I HAD WRITTEN IT ON MY COMPUTER AND I HAD PRINTED A COPY
2 AND MAILED IT, PUT IT IN THE MAIL TO HER. I HAD ALSO FAXED A COPY TO HER
3 LAWYER AND HE SAID I DON'T HAVE ANYTHING TO DO WITH IT, SO SHE WAS
4 DOWN THERE IN FRONT OF MY BUILDING SO I CAME DOWN AND I THINK SHE
5 KNEW WHAT THAT LETTER SAID BECAUSE I THINK HER LAWYER AFTER I FAXED
6 IT - I THINK - I'M SAYING I THINK -

7 Q. ALL RIGHT. NOW WHAT DID YOU DO?

8 A. WHAT I DID WAS SAYING I WANT TO GIVE YOU THIS AND THEN SHE KEPT
9 ON GO AWAY, GO AWAY. AND THIS IS EXACTLY HOW SHE DOES IT. THIS IS AT A
10 LATER DATE -

11 Q. SO YOU ARE REFERRING TO DEFENSE EXHIBIT EIGHT?

12 A. YES. BUT I ALSO HAVE THE SAME ONE LIKE HERE -

13 THE COURT: NOW IS DEFENSE EXHIBIT EIGHT FROM THE
14 SEPTEMBER 11TH, 2009, DATE?

15 A. NO, YOUR HONOR. IT'S A LETTER BUT IT SHOWS HER HABIT OF THIS IS
16 HOW - AND THIS HERE THEY ARE STANDING AT THE MAILBOXES AND I NEED TO
17 GO TO MY MAILBOX -

18 THE COURT: HOLD ON A SECOND. HOLD ON A SECOND. LET ME
19 UNDERSTAND WHAT I'M LOOKING AT. WHAT DATE WAS THAT PICTURE TAKEN?

20 A. IT WAS JUST THE DAY BEFORE THE HEARING WITH THE MAGISTRATE.

21 THE COURT: OKAY. SO WHAT DATE WOULD THAT HAVE BEEN?

22 A. NOVEMBER 9, 2009.

23 THE COURT: OKAY, NOVEMBER 9, 2009. ALL RIGHT. PLEASE
24 CONTINUE.

25 Q. (BY MR. LUPTON) AND YOU ARE SAYING THE RELEVANCE OF THAT IS

1 THAT THE HAND MOTION THAT MS. STEELE WAS MAKING IS CONSISTENT WITH
2 THE HAND MOTION SHE WAS MAKING ON SEPTEMBER 11TH?

3 A. ABSOLUTELY. GO AWAY, GO AWAY. SO WHILE SHE HAD HER HAND
4 THERE I PUT THE PAPER - ONE SHEET, ONE SHEET - LIKE THAT ON HER
5 EXTENDED HAND WHEN SHE WAS SAYING GO AWAY, GO AWAY. I JUST PUT IT
6 ON HER AND INSTINCTIVELY EVEN THOUGH SHE DIDN'T WANT IT, WHEN PEOPLE,
7 YOU KNOW, SEE SOMETHING ABOUT TO FALL SHE DID THAT. THAT IS ALL THAT
8 HAPPENED. AND THEN AFTER THAT SHE REALIZED THAT, YOU KNOW, SHE TOOK
9 MOMENTARY CONTROL OF IT SO SHE PUT HER HAND OUT AND THE PAPER FELL
10 ON THE FLOOR. I SAID IT DOESN'T MATTER, YOU GOT IT. AND I WENT TO MY
11 APARTMENT.

12 Q. COULD YOU HAVE JUST DROPPED IT AT HER FEET?

13 A. NO, SHE WOULD HAVE SAID IT'S NOT PROPER.

14 Q. SO THAT'S WHY YOU WANTED TO PHYSICALLY TOUCH HER?

15 A. NO, I DIDN'T PHYSICALLY TOUCH HER AT ALL.

16 Q. WELL, THE PAPER PHYSICALLY. YOU TOUCHED THE PAPER TO HER
17 PHYSICALLY. THE PAPER YOU SAID YOU LAID ON HER ARM SO YOU CREATED -

18 A. AND SHE WAS THE ONE WHO WAS EXTENDING HER ARM. I DIDN'T LIKE
19 SEEK OUT HER ARM OR ANYTHING.

20 Q. BUT YOU TOOK THE PAPER AND USED THE PAPER. THE PAPER TOUCHED
21 HER PHYSICALLY, IS THAT - YOU PLACED IT AND NOT IN ANY KIND OF VIOLENT
22 WAY BUT YOU ARE SAYING YOU PLACED IT ON HER ARM.

23 A. YES.

24 Q. AND YOUR REASON FOR WANTING TO PLACE IT PHYSICALLY UPON HER
25 WAS BECAUSE YOU BELIEVE THAT THAT WAS REQUIRED TO HAVE EFFECTIVE

1 SERVICE? IS THAT YOUR TESTIMONY?

2 A. YES. AND THESE ARE TWO MORE PICTURES. I THINK ONE OF THEM –
3 THESE ARE DEFENDANT'S EXHIBIT TEN AND ELEVEN AND THEY ARE TAKEN –
4 ONE OF THEM IS THE BIGGER ONE BUT THIS IS HOW SHE DOES IT. GO AWAY, GO
5 AWAY AND SHE KEEPS DOING THAT.

6 Q. AND THESE ARE JUST – AGAIN NOT TAKEN ON SEPTEMBER 11TH?

7 A. NO, BUT THIS IS HER CUSTOMARY WAY OF MOVING.

8 Q. BUT IT'S ADMITTED TO SHOW OR USED IN THIS TESTIMONY TO SHOW HER
9 HABIT AND HER –

10 A. YES.

11 Q. AND THAT IT WAS CONSISTENT WITH THE PICTURE?

12 A. YES.

13 Q. SO THE PICTURE IS CONSISTENT WITH HOW SHE WAS – HER ARM
14 MOVEMENT ON THE DAY IN QUESTION?

15 A. ON THE DAY IN QUESTION AND EVERY TIME SHE'S THERE AND I'M
16 TRYING TO GO TO MY MAILBOX OR, YOU KNOW, ANYTHING. THIS KIND OF
17 MOVEMENT. AND TO SHOW YOU HOW STRONG THIS WOMAN IS, THAT DAY –
18 ONE OF THE LIES THEY SAID ABOUT ME IS THAT I HAD PRETENDED THAT I WAS
19 THE OWNER AND HAD THE TREE CUT.

20 MR. FERNANDEZ: OBJECTION.

21 Q. (BY MR. LUPTON) AND WE ARE JUST TALKING ABOUT SEPTEMBER 11TH.

22 THE COURT: YES, I AM GOING TO SUSTAIN THAT AND STAY AWAY
23 FROM ALL THAT.

24 Q. (BY MR. LUPTON) NOW, DR. FALTAS, DID YOU SLAM HER OR VIOLENTLY
25 STRIKE HER OR VIOLENTLY PUSH HER ON SEPTEMBER 11, 2009?

1 A. IT IS PHYSICALLY IMPOSSIBLE AND THEN SHE CLAIMS IT WOULD HAVE
2 BEEN THREE TIMES AND THAT I SPUN HER AROUND. WHAT IS SHE? A TOP?

3 Q. WHAT DO YOU MEAN IT WAS PHYSICALLY IMPOSSIBLE? EXPLAIN THAT.

4 A. OKAY. FIRST OF ALL, AS A PHYSICIAN I KNOW THAT YOU CANNOT STRIKE
5 SOMEBODY VIOLENTLY ENOUGH FOR THEM TO FALL AND THAT'S WHY I
6 WANTED TO SHOW YOU THIS IS A WOMAN WHO CARRIES A TREE, A TREE
7 BRANCH WITHOUT IT LEAVING BRUISES. SECOND, SECOND.

8 Q. YOUR TESTIMONY IS THAT BASED ON YOUR TRAINING AND EXPERIENCE
9 AS A PHYSICIAN IT IS NOT PHYSICALLY POSSIBLE TO STRIKE SOMEBODY HARD
10 ENOUGH TO CREATE THE KIND OF SPINNING AND KNOCKING BACK THAT SHE
11 HAS DESCRIBED WITHOUT SOME SORT OF MARK OR BRUISE?

12 A. ABSOLUTELY. ALSO -

13 THE COURT: I DON'T KNOW THAT'S - I'LL SORT IT OUT BUT I'M
14 NOT SURE THAT IS AN ACCURATE RECITATION OF WHAT SHE SAID.

15 Q. (BY MR. LUPTON) ALL RIGHT. IS THAT YOUR TESTIMONY?

16 A. OKAY. IN ADDITION, IN ADDITION, REMEMBER -

17 Q. NO, NOT IN ADDITION. I NEED TO CLARIFY THIS.

18 A. RESTATE YOUR STATEMENT AND SEE IF I...

19 Q. BASED ON YOUR TRAINING AND EXPERIENCE --

20 MR. FERNANDEZ: I MEAN I'M GOING TO OBJECT ONLY BECAUSE
21 SHE'S NOT AN EXPERT.

22 THE COURT: I WILL ALLOW IT.

23 Q. (BY MR. LUPTON) WHAT IS YOUR TESTIMONY REGARDING THE
24 POSSIBILITY OR IMPOSSIBILITY OF THIS (INAUDIBLE).

25 A. EVERYONE OF HER VERSIONS IS PHYSICALLY IMPOSSIBLE FOR SEVERAL

1 REASONS. THE MOST VIOLENT VERSION THAT I STRUCK HER WITH SUCH
2 VIOLENCE THAT IT KNOCKED HER BACK AND SPUN HER AROUND WOULD NOT
3 ONLY HAVE LEFT BRUISES ON HER, IT WOULD HAVE BRUISED MY HAND. ALSO,
4 THINK ABOUT IT. I AM FACING HER. I COULD NOT HAVE STRUCK HER THREE
5 TIMES, ESPECIALLY IF I HAD THE PAPER IN MY HAND TRYING TO PUT IT THE
6 PAPER WOULD HAVE TORN. NOW SHE CALLED THE POLICE. THE POLICE CAME
7 AND STAYED THREE HOURS UNDER MY WINDOW AND THEY WERE - BUT THE
8 PROBLEM IS MY CAMERA WAS IN MY CAR. AND ONE OF THE POLICE PEOPLE IS
9 SGT. PASSMORE.

10 Q. WE ARE NOT HERE TO TALK ABOUT SGT. PASSMORE OR ANY PROBLEMS
11 YOU ARE HAVING WITH THE POLICE DEPARTMENT. WHAT WE ARE HERE TO
12 TALK ABOUT IS YOU SAID THAT IT WAS PHYSICALLY IMPOSSIBLE FOR THE
13 EVENTS TO HAVE OCCURRED THE WAY SHE SAID. I WANT YOU TO TELL THE
14 COURT ANY EVIDENCE, ANY TESTIMONY YOU BELIEVE SHOWS THAT PHYSICAL
15 IMPOSSIBILITY.

16 A. OKAY. I WANT HER TO COME AND DO ON ME WHAT SHE CLAIMS -

17 THE COURT: NO, MA'AM. NO, MA'AM.

18 A. FINE. OKAY. ALSO, IF I HAD BEEN STANDING OPPOSITE HER EXACTLY,
19 YOU KNOW, FACE TO FACE.

20 Q. FACE TO FACE. I UNDERSTAND.

21 A. I WOULD HAVE TO HAVE BEEN CLOSE ENOUGH FOR - AND I AM A VERY
22 WEAK PERSON. I GO OUT OF BREATH VERY EASY. I WOULD HAVE BEEN CLOSE
23 ENOUGH FOR THE FORCE TO - TO MAKE A DIFFERENCE BUT THAT SAME FORCE
24 WOULD HAVE RECOILED ME BACK.

25 Q. YOU ARE TALKING ABOUT THE PHYSICS PRINCIPLE OF OPPOSITE AND

1 EQUAL REACTION?

2 A. YES, YES, YES. ABSOLUTELY.

3 MR. FERNANDEZ: I JUST WANT TO REITERATE MY OBJECTION,
4 YOUR HONOR. SHE IS IN NO WAY QUALIFIED TO TESTIFY (INAUDIBLE).

5 THE COURT: I WILL ALLOW IT TO BE AN ONGOING OBJECTION. I
6 WILL ALLOW HER TO TESTIFY TO IT.

7 MR. FERNANDEZ: THANK YOU.

8 A. THAT'S WHAT I TELL PEOPLE. I GO TO MEDICAL SCHOOL BECAUSE I
9 PROVED I WAS SUPERBLY QUALIFIED TO BE AN ENGINEER, YOUR HONOR. THIS
10 WHOLE -

11 Q. (BY MR. LUPTON) WE ARE NOT TALKING ABOUT THAT.

12 A. ALL RIGHT.

13 Q. THIS IS YOUR TIME TO PRESENT EVIDENCE.

14 A. YES, OKAY. FOR THREE HOURS UNDER MY WINDOW.

15 Q. AND WE ARE TALKING ABOUT YOU SAID PHYSICALLY IMPOSSIBLE FOR
16 HER VERSION TO OCCUR.

17 A. YES.

18 Q. IF YOU HAVE TESTIMONY YOU WISH, THIS IS YOUR TIME TO EXPLAIN TO
19 THE JUDGE WHY IT'S PHYSICALLY IMPOSSIBLE.

20 A. YES.

21 Q. FOCUS ON THAT, PLEASE.

22 A. AND THEN THE POLICE CAME AND STAYED FOR THREE HOURS.

23 Q. SO YOU HAVE NO MORE EVIDENCE OF PHYSICAL IMPOSSIBILITY? YES OR
24 NO. THIS IS YOUR TIME TO GIVE ANY EVIDENCE OF PHYSICAL IMPOSSIBILITY
25 THAT THE EVENT SHE DESCRIBED COULD NOT HAVE HAPPENED.

1 A. IT'S ALSO PHYSICALLY IMPOSSIBLE FOR CHARLENE TO HAVE SEEN IT
2 BECAUSE IT WAS ...

3 Q. AND WHY IS IT PHYSICALLY IMPOSSIBLE FOR HER TO HAVE SEEN IT?

4 A. BECAUSE SHE WAS IN THE FRONT OF THE BUILDING AND THEN SHE
5 WALKED BACK AND IT HAPPENED IN BETWEEN THOSE TWO. IN ADDITION -

6 Q. SO YOUR TESTIMONY IS THAT YOU GAVE - LET ME REPHRASE. I DON'T
7 WANT TO PUT WORDS IN YOUR MOUTH. WHERE - BASED ON YOUR TESTIMONY,
8 WHERE DID YOU PLACE THE NOTICE OR THE PROTEST, WHERE DID YOU GIVE IT
9 TO MS. STEELE?

10 A. BETWEEN THOSE TWO.

11 Q. AND YOU ARE SAYING IN BETWEEN THESE TWO BUILDINGS?

12 A. IN BETWEEN THOSE TWO BUILDINGS AND ALSO THESE ARE THE -

13 Q. IN BETWEEN THE AIR CONDITIONER UNITS?

14 A. YES.

15 Q. AS REFLECTED IN DEFENSE'S EXHIBIT FIFTEEN AND SIXTEEN.

16 A. YES. IN ADDITION, CHARLENE CROUCH HAD A SOFA IN HER BEDROOM SO
17 SHE COULDN'T HAVE BEEN IN HER BALCONY AND IT WOULD HAVE BEEN
18 PHYSICALLY IMPOSSIBLE FOR HER TO SEE THOSE ...

19 Q. AND YOU'VE GOT DEFENSE EXHIBIT ONE, TWO AND THIRTY THAT SHOWS
20 THE COUCH AND THAT'S WHERE IT WAS ON SEPTEMBER 11TH?

21 A. BEFORE AND AFTER. I DIDN'T LOOK TO SEE IF IT WAS THERE ON
22 SEPTEMBER 11TH AND THIS IS NOT TAKEN ON SEPTEMBER 11TH BUT ONE OF THEM
23 IS BEFORE - ONE OR TWO OF THEM BEFORE AND THE ONE OTHER AND TWO ARE
24 AFTER. AND THEY WERE ALSO - THIS COUCH WAS BLOCKING, BLOCKING THE
25 EXIT TO THE BALCONY. BUT THEN AFTER THAT HAPPENED AND I SAID YOU GOT

1 IT AND I WENT TO MY APARTMENT, THEN FROM MY WINDOW I COULD SEE
2 POLICE CARS AND FOR ABOUT ONE HOUR THEY WERE - DINAH STEELE AND
3 CHARLENE CROUCH WERE LIKE MIMICKING HAND GESTURES AND DIFFERENT
4 ARMS LIKE THEY WERE BEING COACHED WHAT TO SAY. AFTER THAT -

5 MR. FERNANDEZ: OBJECTION, YOUR HONOR. SPECULATION.

6 THE COURT: ALL RIGHT. I'M GOING TO ALLOW IT. I'LL SORT IT
7 OUT.

8 A. THANK YOU, YOUR HONOR. SO THEY WERE LIKE, YOU KNOW, SOMEBODY
9 DOING THIS AND THEY WOULD SHAKE THEIR HEAD, SOMEBODY DOING THIS
10 AND THEY WOULD SAY, SO THEY WERE LIKE - AND THAT HAPPENED FOR THREE
11 HOURS. AND THEN PASSMORE CALLED ME FROM UNDER MY WINDOW AND SAID
12 COME DOWN OR I WILL TOW YOUR CAR BECAUSE YOU HAVE A BAD LICENSE
13 PLATE IN A PRIVATE - OR A BAD LICENSE TAG -

14 Q. (BY MR. LUPTON) WE ARE NOT TALKING ABOUT PASSMORE. WE ARE HERE
15 ABOUT -

16 THE COURT: I OVERRULE IT. I'LL SORT IT OUT. PLEASE CONTINUE,
17 MR. LUPTON. PLEASE ASK HER A QUESTION.

18 A. THANK YOU, YOUR HONOR.

19 THE COURT: MR. LUPTON, DO YOU HAVE A QUESTION TO ASK
20 HER?

21 A. I CALLED - (INAUDIBLE). IT WAS THREE HOURS. THREE HOURS -

22 THE COURT: YOU'VE TESTIFIED TO THAT. MR. LUPTON, DO YOU
23 HAVE A QUESTION TO ASK.

24 A. I HAD TO CALL -

25 THE COURT: MR. LUPTON GETS TO ASK YOU QUESTIONS.

- 1 A. I'M SORRY.
- 2 Q. (BY MR. LUPTON) NOW DID YOU VIOLENTLY STRIKE OR SLAM –
- 3 A. WHY WOULD I DO THAT? I DID NOT DO IT AND WHY WOULD I DO IT?
- 4 THAT WOULD TEAR THE PAPER. I WAS TRYING TO PUT --
- 5 Q. (BY MR. LUPTON) WHICH IS MY NEXT QUESTION. WHAT WAS YOUR
- 6 PURPOSE IN GOING OVER TOWARDS MS. STEELE?
- 7 A. TO GIVE HER THE LETTER IN A MANNER THAT SHE CANNOT DENY SO
- 8 THAT THEY DON'T COME ON THE 14TH IN MY ABSENCE AND ENTER MY
- 9 APARTMENT AND STEAL FROM IT AND PHOTOGRAPH IT BECAUSE THEY HAD
- 10 SENT ME CERTIFIED LETTERS SAYING WE WILL COME IN AND PHOTOGRAPH IT.
- 11 AND IF I REMEMBER CORRECTLY I HAD EVEN TRIED TO GET AN INJUNCTION
- 12 FROM THE MAGISTRATE AND IT DIDN'T WORK. I THINK I WENT TO THE – TRIED
- 13 TO GO TO THE STATE SUPREME COURT –
- 14 Q. WITH REGARDS TO SEPTEMBER 11?
- 15 A. UH-HUH.
- 16 Q. DID YOU DO MORE THAN SERVE WHAT A PROCESS SERVER AS YOU MIGHT
- 17 SEE ON T.V. WOULD DO? THE PUTTING IT ON THEM AND SAYING YOU'VE BEEN
- 18 SERVED? DID YOU DO ANYTHING MORE VIOLENT THAN THAT?
- 19 A. I DIDN'T DO ANYTHING VIOLENT. AND I HAD BEEN PREVIOUSLY SERVED
- 20 BY PROCESS SERVERS AND I HAD ALSO IN THE COURSE OF OTHER LITIGATION
- 21 BEEN TOLD THAT PERSONAL SERVICE MEANS PUTTING IT IN THEIR HAND. SO
- 22 THAT'S ALL I DID.
- 23 Q. WHAT YOU DID WAS CONSISTENT WITH WHAT YOU HAVE SEEN IN
- 24 SERVICE OF PROCESS?
- 25 A. YES, SEVERAL TIMES. AND SHE WAS VERBALLY ABUSING ME ALL THE

1 TIME. AND FOR THREE HOURS THEY WERE MIMICKING AND THEN PASSMORE
2 TOLD ME TO COME DOWN BECAUSE IF NOT HE WILL TOW MY CAR BECAUSE IT
3 HAS A BAD LICENSE PLATE IN A PRIVATE AREA. AND I SAID, NO, IT DOESN'T
4 HAVE A BAD LICENSE PLATE, IT'S CURRENT. AND I HAD TO CALL HIS
5 SUPERVISOR -- I THINK IT WAS LT. EVANS -- AND AT THAT TIME I HAD ALSO HAD
6 TO CALL MARK WHITLARK WHO IS A LAWYER AND I LATER PAID HIM TWO
7 HUNDRED DOLLARS SO THAT THEY CAN (INAUDIBLE). SO THEY WERE WANTING
8 TO LURE ME OUTSIDE TO ARREST ME. AND ALL OF THIS, YOUR HONOR, BECAUSE
9 THE EVICTION TRIAL WAS SCHEDULED LATER IN SEPTEMBER. I HAD NOT
10 CALLED THE POLICE ON THEM EXCEPT -- AND NOT EVEN ON THEM. MARCH 12TH
11 WHEN AT 10:30 AT NIGHT SOMEONE CAME AND VIOLENTLY KNOCKED AT MY
12 DOOR., MARCH 14TH --

13 MR. FERNANDEZ: YOUR HONOR, WE'VE COVERED THIS.

14 THE COURT: I HAVE HEARD THAT TESTIMONY. MR. LUPTON, DO
15 YOU HAVE ANY OTHER QUESTIONS YOU NEED TO ASK? WISH TO ASK, I'M
16 SORRY.

17 Q. (BY MR. LUPTON) DO YOU HAVE ANYTHING ELSE SPECIFICALLY RELATED
18 TO THE PHYSICAL IMPOSSIBILITY OF HER VERSION, YES OR NO, THAT YOU
19 HAVEN'T ALREADY TESTIFIED TO? IS THERE ANYTHING ELSE YOU WANT TO
20 ADD ABOUT THAT PHYSICAL IMPOSSIBILITY?

21 A. BUT I HAVE RECORD EVIDENCE THAT SHE LIED BECAUSE I WAS -- OKAY.
22 CAN I MOVE --

23 Q. REGARDING THE PHYSICAL IMPOSSIBILITY, IS THERE ANYTHING ELSE
24 REGARDING PHYSICAL IMPOSSIBILITY YOU WANT TO TELL THE COURT?

25 A. I DON'T THINK SO. NOW SHE TESTIFIED THAT SHE HAS BEEN --

1 MR. FERNANDEZ: IT'S NOT BEEN A QUESTION ASKED, YOUR
2 HONOR.

3 THE COURT: MR. LUPTON, PLEASE ASK HER A QUESTION.

4 MR. LUPTON: YOUR HONOR, AT THIS TIME I HAVE NO FURTHER
5 QUESTIONS. IF SHE WANTS TO TESTIFY FURTHER AND THE COURT PERMITS
6 TESTIMONY IN THE NARRATIVE –

7 A. WELL, THAT'S VERY IMPORTANT. SHE SAID THAT SHE WAS – THERE WAS
8 –

9 MR. FERNANDEZ: OBJECTION.

10 THE COURT: I'LL TELL YOU WHAT WE ARE GOING TO DO. MR.
11 LUPTON HAS FINISHED HIS QUESTIONS. DR. FALTAS, I'M GOING TO GIVE YOU
12 FIVE MINUTES IF THERE IS ANYTHING ELSE YOU WANT TO TELL ME.

13 A. YES, YOUR HONOR. I WAS FALSELY ARRESTED ON DECEMBER 2ND, 2009,
14 ON FALSE HARRASSMENT CHARGES WHERE SHE ALLEGES, DINAH STEELS
15 ALLEGES SHE IS THE VICTIM AND ALSO TERESA INGRAM ALLEGES THAT SHE IS
16 THE VICTIM. BETWEEN DECEMBER 2ND, 2009, AND WHEN SHE CLAIMS JANUARY
17 10TH SHE DEVELOPED A NERVOUS BREAKDOWN, I WAS NOT IN MY APARTMENT
18 AT ALL. AND, IN FACT, IN FACT, IN A HEARING ON JAUNARY 7, 2010, IN SUMTER
19 BEFORE THE HONORABLE JUDGE JAMES, HEATHER WEISS WHO WAS
20 PROSECUTING THE CASE SAID MS. STEELE IS NOT HERE BECAUSE SHE HAS HAD
21 DIFFICULTIES. AND JUDGE JAMES – AND THERE IS A TRANSCRIPT – AND JUDGE
22 JAMES SAID WITH WHOM. SHE SAID – HEATHER WEISS SAID SHE JUST HAS
23 STRESS.

24 MR. FERNANDEZ: I JUST HAVE OBJECTION TO THIS RELEVANCE
25 AND HEARSAY.

1 **THE COURT:** IT'S A STANDING OBJECTION. I UNDERSTAND BOTH
2 RELEVANCY, HEARSAY. GOT IT.

3 **A.** ALL RIGHT, FINE. BUT SHE SAID THAT SHE HAS HAD STRESS FROM ME.
4 FROM DECEMBER 2ND TO JANUARY 10TH WHEN SHE CLAIMS SHE SAW A DOCTOR I
5 WAS NOT EVEN THERE. I WAS UNDER A BOND NOT TO GO TO MY APARTMENT.
6 IN ADDITION, WHEN I TRIED TO INSPECT THE EVIDENCE AFTER - FIRST, I
7 ABSOLUTELY WANTED BOTH CASES TO BE TRIED TOGETHER. IT WAS HEATHER
8 WEISS AND THAT'S A RECORD, PUBLIC RECORD, SELF AUTHENTICATING. SHE
9 MADE THE MOTION THAT ONLY THE CASE AGAINST - PRETENDED BY TERESA
10 INGRAM WOULD GO FORWARD. I DEFENDED MYSELF PRO SE. THE JURY
11 DEADLOCKED AND AFTER THAT BOTH CASES WERE DISMISSED. BUT I --

12 **THE COURT:** LET ME STOP YOU ONE SECOND, DR. FALTAS. I'M
13 GOING TO LET YOU HAVE YOUR LAST THREE MINUTES BUT I WILL ENCOURAGE
14 YOU THAT IF YOU'VE GOT ANYTHING THAT'S RELEVANT TO THIS DATE THAT
15 YOU MIGHT WANT TO INCLUDE THAT IN YOUR LAST THREE MINUTES.

16 **A.** IT'S RELEVANT TO THE LIES, YOUR HONOR.

17 **THE COURT:** WELL, IT'S YOUR CHOICE. I JUST WANTED TO MAKE
18 SURE YOU HAD THAT UNDERSTANDING THAT I'M LOOKING FOR RELEVANT
19 TESTIMONY. PLEASE GO FORWARD.

20 **A.** WELL, I MEAN I'M RESPONDING TO WHAT SHE FALSELY SAID. SO I
21 WASN'T GIVEN FULL DISCOVERY BUT THEN WHEN THE CASE WAS REMANDED
22 HERE I CAME HERE ON NOVEMBER 10, 2010, AND LOOKED AT WHAT THEY
23 CALLED THE TWO BANKER'S BOXES AND IN THEM - AND THEY MAY STILL BE
24 UPSTAIRS AND I IMPLORE YOUR HONOR TO HAVE THEM BROUGHT DOWN
25 BECAUSE THERE IS A SHEET THAT'S CALLED VICTIM'S SHEET, (INAUBIDLE) AND

1 SIGNED BY DINAH STEELS SOMETIME IN DECEMBER, 2009, AFTER I WAS
2 ARRESTED. AND SHE SAID - THERE IS A QUESTION. DO YOU HAVE
3 PSYCHOLOGICAL EFFECT, SHE SAYS NO. HAVE YOU SEEN A DOCTOR? SHE SAYS
4 NO. SO THERE IS A DOCUMENT THAT I SAW WITH MY EYES AND IT MAY STILL BE
5 UPSTAIRS. SHE SAT HERE AND THEN SHE SAID I'M TAKING MEDICATIONS UNTIL
6 TODAY. I WOULD LIKE TO READ IN NOVEMBER, 2009, THAT - SHE TRIED TO GET
7 THE TEMPORARY RESTRAINING ORDER AGAINST ME SO THAT I DON'T PARK MY
8 OWN CAR IN MY PARKING LOT AND I WANT TO READ IT. AND AT THAT TIME SHE
9 WAS PRETENDING TO BE CALLED MS. MASON AND, OF COURSE, SHE'S NOT.

10 MR. FERNANDEZ: YOUR HONOR, I'LL JUST POINT OUT THAT THIS
11 IS AFTER THIS OCCURRENCE.

12 THE COURT: THANK YOU, SIR.

13 A. AND THAT'S PAGE 136, THE ORIGINAL IS ALSO IN THIS COURT'S FILES AND
14 THAT WAS DONE BY A TRANSCRIPTIONIST I HIRED. BY HEATHER WEISS --
15 STARTING AT PAGE 136 AND I AM CROSS EXAMINING DINAH STEELE, TOO. DID
16 YOU WRITE TO THE TENANTS NOTICES ABOUT A YEARLY INSPECTION BEFORE? I
17 DON'T RECALL. QUESTION: OKAY, IS'T IT TRUE THAT YOU ARE TRYING TO
18 COME ON LABOR DAY AND I WAS TRYING TO TELL YOU, NO, YOU CANNOT COME
19 IN ON LABOR DAY. ANSWER: YEAH, AND WE RESCHEDULED IT. QUESTION: AND
20 ISN'T IT TRUE THAT I WAS TRYING TO GIVE YOU THE LETTER THAT ISN'T IT TRUE
21 THAT MY LEASE SAYS YOU CAN ONLY COME IN MY PRESENCE UNLESS IT'S AN
22 EMERGENCY WHERE YOU CANNOT CONTACT ME? ANSWER: YES, AND YOU
23 WERE THERE AND YOU STILL WOULDN'T LET US IN, MARIE. QUESTION: MY
24 QUESTION IS IT DOES SAY THAT AND AGAIN YOU WERE THERE. QUESTION: WE
25 KNOCKED ON YOUR DOOR AND YOU WOULDN'T ALLOW US IN. AND MY

1 QUESTION IS DIDN'T I, WASN'T I TRYING TO GIVE YOU A LETTER TELLING YOU?
2 ANSWER: ON THE DAY YOU ASSAULTED ME. QUESTION: I DIDN'T ASSAULT YOU.
3 AND THEN I TURNED TO THE JUDGE AND THE COURT SAYS, OKAY, SORRY BUT
4 SHE CANNOT. THE COURT SAYS DO NOT. I SAY OKAY. THE COURT: SHE CAN
5 EXPLAIN HER ANSWERS AND I'M GOING TO GIVE YOU NINE MORE MINUTES AND
6 IT WILL BE TWELVE NOON. I SAY SHE CANNOT MAKE LEGAL CONCLUSIONS. SHE
7 CANNOT. COURT: SHE CAN EXPLAIN HER ANSWER. YOU CAN ASK HER A
8 QUESTION, SHE CAN ANSWER IT YES OR NO AND SHE CAN EXPLAIN HER
9 ANSWER. (INAUDIBLE) EXCEPTION. SO NOTED. QUESTION BY ME: ISN'T IT TRUE
10 THAT YOUR LAWYER DOESN'T REPRESENT YOU IN ANY MATTER EXCEPT WHAT
11 THE INSURANCE COMPANY HIRED? THE COURT: THAT IS IMMATERIAL TO THIS
12 CASE. I SAY, OKAY, SHE SAID THAT. SHE SAID THAT THE LETTER NEEDED TO GO
13 TO HER LAWYER. THE COURT SAYS: THAT'S IMMATERIAL TO THIS CASE. I
14 DON'T EVEN CARE ANYTHING ABOUT THAT. I SAY, JUDGE, SHE - HE SAYS NEXT
15 QUESTION.

16 **THE COURT:** DR. FALTAS, YOU'VE GOT TWENTY SECONDS.

17 **A.** WELL, COULD I ASK THAT THOSE PAGES BE COPIED, YOUR HONOR?

18 **THE COURT:** I DON'T THINK IT'S APPROPRIATE TO PUT ALL THAT
19 TESTIMONY FROM ANOTHER - IF YOU WANT TO SAY SOMETHING YOU CAN SAY
20 IT. I DON'T THINK IT'S APPROPRIATE TO ATTACH ANOTHER TRANSCRIPT TO
21 YOUR TESTIMONY REGARDING MS. STEELE.

22 **A.** THAT REFERS TO THAT DAY THAT SHE DIDN'T WANT TO TAKE THE
23 LETTER.

24 **THE COURT:** Y'ALL HAVE CROSSED HER ON IT. YOUR LAWYER
25 HAS DONE A GOOD JOB. I DON'T THINK IT'S APPROPRIATE TO ATTACH THOSE

1 PAGES OF THE TRANSCRIPT. I DID ALLOW YOU LENIENCY TO SAY THINGS EVEN
2 AFTER YOUR LAWYER WAS FINISHED. ALL RIGHT. WE ARE NOW AT A POINT OF
3 DOING CLOSING – I'M SORRY. IS THERE ANY CROSS EXAMINATION?

4 MR. FERNANDEZ: NO, YOUR HONOR.

5 THE COURT: I GOT AHEAD OF MYSELF. WE ARE NOW AT A POINT
6 OF –

7 MR. LUPTON: YOUR HONOR, BEFORE WE GO INTO CLOSING THERE
8 IS ONE ADMINISTRATIVE MATTER. I MISTAKENLY MARKED TWO PIECES OF
9 EVIDENCE AS DEFENSE EXHIBIT ONE, THE C.D. AND THE FIRST PICTURE. I
10 WOULD MOVE AT THIS TIME TO HAVE THE C.D. RENUMBERED. EITHER
11 RENUMBERED AS –

12 THE COURT: ACTUALLY THIS IS WHAT I'LL DO. HOW MANY
13 PIECES – NOT THE ONE THROUGH THIRTY-ONE. HOW MANY PIECES DID YOU PUT
14 IN?

15 MR. LUPTON: I PUT IN ONE, THE C.D.

16 THE COURT: C.D. AND THEN THERE WAS –

17 MR. LUPTON: THIRTY-ONE FROM DR. FALTAS.

18 THE COURT: OKAY. I'D LIKE THE C.D. TO BE CALLED EXHIBIT "A."
19 MAYBE THAT WILL CLEAR THAT UP.

20 (C.D. IS RECEIVED INTO EVIDENCE AS DEFNDANT'S EXHIBIT "A")

21 MR. LUPTON: THANK YOU, YOUR HONOR.

22 THE COURT: ANY MOTIONS? I'M SORRY. ARE YOU RESTING?

23 MR. LUPTON: THE DEFENSE RESTS.

24 THE COURT: OKAY. ANY MOTIONS AT THIS TIME?

25 MR. LUPTON: YOUR HONOR, WE RENEW THE DIRECTED VERDICT

1 MOTION. SAME ARGUMENT.

2 THE COURT: ALL RIGHT. IT IS DENIED. CLOSING ARGUMENTS.

3 MR. FERNANDEZ.

4 MR. FERNANDEZ: I BELIEVE I GET TO GO LAST, YOUR HONOR.

5 THE COURT: I APOLOGIZE. YOU DO GET TO GO LAST. MR.

6 LUPTON.

7 MR. LUPTON: YOUR HONOR, MAY IT PLEASE THE COURT. YOUR
8 HONOR, OBVIOUSLY THE COURT IS WELL AWARE THAT WE ARE HERE ON A
9 CRIMINAL CASE. THERE HAS BEEN EXTENSIVE CONTROVERSY AND LITIGATION
10 BETWEEN THE TWO PARTIES. THERE'S BEEN OTHER TRIALS DEALING WITH THE
11 HARRASSMENT ISSUES. THERE'S CIVIL LITIGATION THAT IS - I DON'T KNOW IF
12 IT'S ONGOING STILL OR NOT BUT TODAY WE ARE HERE SIMPLY ON THE
13 ASSAULT. AND WITH REGARDS TO THAT ASSAULT THE CITY HAS TO PROVE
14 BEYOND A REASONABLE DOUBT. IT SAYS, READING FROM THE CODE SECTION,
15 IT SHALL BE UNLAWFUL FOR ANY PERSON TO COMMIT AN ASSAULT AND
16 BATTERY OR IN ANY MANNER WHATEVER TO ENGAGE IN COMBAT OR FIGHT IN
17 ANY PRIVATE OR PUBLIC PLACE WITHIN THE CORPORATE LIMITS OF THE CITY.
18 THERE'S NO QUESTION THIS WAS IN THE CORPORATE LIMITS. AND PRIVATE
19 PLACE, PUBLIC PLACE, YOU KNOW, HOWEVER YOUR DEFINITIONS, IT DOESN'T
20 MATTER. IT CLEARLY WAS ONE OF THE TWO. BUT THERE IS NO EVIDENCE THAT
21 THERE WAS A FIGHT OR A COMBAT SO THE ONLY ISSUE IS, AS I UNDERSTAND IT,
22 THE CITY IS CONTENDING THAT THIS WAS QUALIFIED UNDER ASSAULT AND
23 BATTERY. ASSAULT AND BATTERY IS DEFINED FOR CRIMINAL PURPOSES, WAS
24 FIRST DEFINED AND I'LL GO AHEAD AND PROVIDE A COPY TO THE CITY OF THE
25 CASE AND I'LL HAND UP A COPY OF THE CASE. IT WAS FIRST DEFINED

1 CRIMINALLY IN SOUTH CAROLINA BACK IN 1925. IT SAYS SIMPLE ASSAULT AND
2 BATTERY AS THE TERM IMPLIES IS AN UNLAWFUL ACT OF VIOLENT INJURY TO
3 THE PERSON OF ANOTHER. AND IT GOES ON TO TALK ABOUT NO
4 CIRCUMSTANCES OF AGGRAVATION. NOT AN ISSUE HERE. BUT IT'S AN
5 UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON OF ANOTHER. THE
6 DEFINITION IN JONES HAS BEEN THE DEFINITION USED IN THIS STATE FOR
7 ALMOST ONE HUNDRED YEARS. IT WAS CHANGED BY STATUTE IN 2010 WHICH
8 THE ASSAULT AND BATTERY STATUTE, 16-3-600, SAYS ASSAULT AND BATTERY IN
9 THE 3RD DEGREE IF A PERSON UNLAWFULLY INJURES ANOTHER PERSON. IT DOES
10 EXPAND IT TO ALLOW OFFERS OR ATTEMPTS TO INJURE ANOTHER PERSON WITH
11 THE PRESENT ABILITY TO DO SO. BUT IT STILL REQUIRES AN INJURY OR AT LEAST
12 AN ATTEMPT TO INJURE. IN THIS CASE THERE IS ABSOLUTELY NO QUESTION I
13 BELIEVE BASED ON THE TESTIMONY THAT DR. FALTAS' INTENT WAS NOT TO
14 CAUSE ANY PHYSICAL HARM OR ATTACK OR ASSAULT MS. STEELE. SHE WAS
15 TRYING TO SERVE A PIECE OF PAPER. SHE HAD UNDER HER LEASE A RIGHT TO
16 PROTEST THE INSPECTION THAT WAS SCHEDULED. NOW WHATEVER PROBLEMS
17 WERE GOING ON BETWEEN THE TWO, WHETHER IT WAS REASONABLE TO
18 PROTEST OR NOT, ALL THAT'S IMMATERIAL. SHE HAD A RIGHT TO DO THE
19 PROTEST. SHE DID IT. SHE WAS TRYING TO GIVE THE PAPER. THERE WAS NO
20 INTENT, NO OFFER OR ATTEMPT, EVEN UNDER THE MORE EXPANDED VERSION,
21 TO DO ANY INJURY. SO WE GO BACK TO THE DEFINITION OF SIMPLE ASSAULT
22 AND BATTERY AS THE TERM IS DEFINED AT THE TIME OF THE CASE. UNLAWFUL
23 ACT OF VIOLENT INJURY. SO NOW WE HAVE TO LOOK AT THE TESTIMONY.

24 THE TESTIMONY THAT CAME OUT IN THE 911 TAPE THAT WAS
25 ADMITTED INTO EVIDENCE WHICH SUBSTANTIATED THAT TESTIMONY IS THAT

1 WHEN THIS FIRST CAME UP SHE SAID SHE WAS PUSHING ON ME. THERE WAS NO
2 INJURY. THE COURT HEARD THE 911 CALL, HEARD HER VOICE. THERE WAS NO
3 COMPLAINTS OF INJURY. HER VOICE WAS PERHAPS SLIGHTLY AGGRAVATED
4 BUT NOT IN ANY PAIN. THERE WAS NO INJURY, NO NOTHING. THERE WAS NO
5 TESTIMONY ABOUT SHE WAS IN PAIN. THE TESTIMONY WAS THAT SHE WAS NOT
6 BRUISED, SHE WAS NOT INJURED, SHE WAS NOT - IN FACT, SHE SPECIFICALLY
7 AND EXPLICITLY SAID ON CROSS WHEN I ASKED HER YOU WEREN'T INJURED
8 AND SHE SAID NO. SHE TALKED ABOUT THE MENTAL WHICH I WILL ADDRESS IN
9 JUST A MOMENT BUT SHE ADMITTED THAT SHE WASN'T BRUISED, THAT SHE
10 WASN'T INJURED IN ANY PHYSICAL WAY, THAT THERE WAS NO INJURY. SHE
11 ADMITTED SHE DIDN'T GO TO THE DOCTOR. SHE DIDN'T GET ANY MEDICATION.
12 SHE DIDN'T EVEN TAKE ANY MOTRIN ACCORDING TO HER TESTIMONY. NO
13 MEDICATION WAS HER TESTIMONY. SO HAD SHE HAD ANY PAIN OR ANYTHING
14 THERE'S NO EVIDENCE OF THAT.

15 NOW SHE THEN TRIES TO SPIN THIS NOW FOR THE FIRST TIME AS I
16 HAD EMOTIONAL INJURY. BUT ON CROSS SHE ADMITTED THAT SHE NEVER SAW
17 A DOCTOR, NEVER DID ANYTHING, THAT THIS EMOTIONAL INJURY WASN'T
18 MANIFESTED UNTIL FOUR MONTHS OR MORE LATER IN JANUARY OF 2010 AT THE
19 EARLIEST AND THAT IT WAS A RESULT OF THE HARRASSMENT. SHE TRIED TO
20 SAY, WELL, INCLUDING THIS INCIDENT. AT ONE POINT SHE TRIED TO SAY THAT
21 IT WAS SOLELY BECAUSE OF THIS INCIDENT BUT ON CROSS SHE ADMITTED IT'S
22 ALL OF THIS. THE EVENTS THAT SHE FELT WERE HARRASSING AND WHETHER
23 THEY ARE HARRASSING OR NOT THAT ISSUE ISN'T BEFORE THE COURT.
24 WHETHER THERE WAS ANY CIVIL ISSUES NOT BEFORE THIS COURT. ALL THE
25 EVENTS WHICH THE COURT HEARD SOME TESTIMONY ABOUT AND THE COURT IS

1 AWARE OF MORE, THE AGGRAVATION OF DEALING WITH MULTIPLE COURT
2 APPEARANCES, COURT APPEARANCES THAT WERE SCHEULED OUT OF TOWN,
3 ALL OF THIS CAUSED HER PSYCHOLOGICAL, HER EMOTIONAL ISSUES, NOT THIS
4 EVENT. TO SAY THAT THIS ONE EVENT CAUSED THAT INJURY, IF YOU WANT TO
5 CHARACTERIZE IT AS AN INJURY, IS SIMPLY NOT CREDIBLE BASED ON THE
6 TESTIMONY AND FACTS THAT ARE IN EVIDENCE.

7 ADDITIONALLY, AS YOU LOOK AT THE TESTIMONY YOU HAVE
8 CREDIBILITY ISSUES THAT THE COURT HAS TO ADDRESS. YOU HAD MS. STEELE
9 CONCEDED THAT HER VERSION OF EVENTS EVOLVED OVER TIME UNDER HER
10 PHRASE. PERHAPS SHE DIDN'T CONCEDE THAT THEY HAVE ALL BUT HER
11 CONCESSIONS SHOW THAT THE TESTIMONY OR THAT HER STATEMENTS HAVE
12 EVOLVED OVER TIME. IT WENT FROM SHE'S PUSHING ON ME TO AFTER THE
13 OFFICER COMES, OFFICER WON'T GET A WARRANT, AND CITY HAS ARGUED THE
14 RAMSEY ISSUE. I WOULD NOTE THAT RAMSEY HADN'T BEEN DECIDED UNTIL
15 THREE YEARS ALMOST AFTER THIS CASE. AT THE TIME THAT THIS OFFENSE
16 OCCURRED IT WAS ROUTINE TO DO THE ARRESTS ON BLUE TICKETS UNDER
17 THESE CIRCUMSTANCES. RAMSEY CHANGED THAT PRACTICE. ADDITIONALLY,
18 EVEN UNDER RAMSEY HAD THE OFFICER EVALUATING THIS CASE FELT THAT
19 THIS ROSE TO THE LEVEL OF A CRIMINAL CASE, THAT OFFICER COULD HAVE
20 GONE OUT AND GOTTEN A WARRANT. THERE IS THE CONFLICTED TESTIMONY
21 STARTED OUT AS PUSHED ME, THEN IT WAS HOSTILE AND VIOLENTLY PUSHED,
22 THEN VIOLENTLY STRUCK BUT SAYS IT WAS WITH AN OPEN HAND WITH PAPER
23 IN HER HAND. OBVIOUSLY THE COURT CAN BE AWARE THAT IT'S HARD TO
24 HAVE AN OPEN HAND AND PAPER IN THE HAND AS YOU ARE TRYING TO DO
25 SOMETHING. SO THERE'S CONFLICTING ISSUES THERE. THEN IT EVOLVES

1 FURTHER TO SLAMMING ME AND GOES FROM SHOVING ME BACK TO SPINNING
2 ME AROUND. THE ISSUE EVOLVES. AND I UNDERSTAND HER FRUSTRATION IN
3 DEALING WITH DR. FALTAS AND THE MANY ISSUES THAT THEY'VE HAD
4 TOGETHER BUT I WOULD JUST SUGGEST TO THE COURT THAT IN THIS SITUATION
5 THAT FRUSTRATION IS CAUSING AND COLORING HER VIEWS OF WHAT
6 HAPPENED. AND JUST AS YOU ASK TWO PEOPLE WHO SEE SOMETHING AND
7 THEY CAN PERCEIVE AN EVENT DIFFERENTLY BASED UPON THEIR
8 PRECONCEIVED NOTIONS AND THEIR BIASES AND PREJUDICES. I THINK THAT
9 THAT'S WHAT WE'VE GOT HERE AND THE EVIDENCE AND THE TESTIMONY
10 SHOWS THAT. I THINK THAT'S BORNE OUT WHEN YOU LOOK AT THE TESTIMONY
11 OF THE SECOND STATE'S - EXCUSE ME, CITY WITNESS. THE SECOND CITY
12 WITNESS WHO DESPITE MULTIPLE WAYS THAT IT WAS ASKED, MULTIPLE
13 QUESTIONS ASKING THE SAME QUESTION SAME WAY, IN DIFFERENT WAYS, SAID
14 SHE WAS JUST PUSHING THE PAPERS INTO HER CHEST. NO SHOVING, NO
15 STRIKING, NO SLAMMING, NO SPINNING. SHE ALSO CONTRADICTED OTHER
16 STATEMENTS ABOUT WHETHER OR NOT THERE WAS RETREATING GOING ON.
17 YOU KNOW, SHE SAID THAT THERE WAS NO RETREATING, THAT MS. STEELE
18 DIDN'T RETREAT. IF WE TAKE THE TWO AND TRY AND MESH THEM THEN I
19 THINK WHAT YOU COULD REASONABLY BELIEVE IS THAT WHEN MS. CROUCH
20 SAYS I SAW HER TAKE STEPS BACK AS THE PUSHING THE PAPER INTO HER CHEST
21 WAS OCCURRING THAT THAT WAS A RETREAT. I THINK YOU CAN REASONABLY
22 AND IN THE LIGHT MOST FAVORABLE OR RATHER IN LOOKING FOR WHETHER OR
23 NOT THERE'S REASONABLE DOUBT I THINK THAT CREATES SOME DOUBT THAT
24 THAT IS WHAT OCCURRED, THAT THE STEPPING BACK WASN'T SHOVING BACK
25 BUT WAS PART OF THE RETREATING.

1 YOU'VE ALSO GOT DISCREPANCIES ON THE WITNESSES. THE
2 OFFICER ONLY SAID ONE. THERE WAS -- BUT THE OFFICER DID UNDOUBTEDLY
3 TALK TO EVERYBODY OUT THERE. ONLY LISTED ONE WHO CORROBORATED
4 WHAT MS. STEELE SAID. SO OUT OF THREE PEOPLE ONLY ONE OF THEM
5 CORROBORATED THIS. YOU'VE GOT THREE THAT SHE TALKS ABOUT IN
6 NOVEMBER. SHE NARROWS IT DOWN TO ONLY TWO NOW AND THEN SAYS,
7 WELL, MAYBE THERE WAS A THIRD. THE OFFICER TALKED TO THE PEOPLE.
8 THERE WAS NO CORROBORATION. THEY WEREN'T LISTED. THEY HAVEN'T BEEN
9 TALKED TO. I THINK THE COURT IS ENTITLED TO ASSUME BECAUSE THE CITY
10 HAS THE BURDEN OF PROOF AND IF THERE WERE WITNESSES THAT THEY DIDN'T
11 BRING THEN I THINK THE COURT IS ENTITLED TO ASSUME THAT THEY DID NOT
12 SUPPORT THE CITY'S STATEMENT, THE CITY'S VERSION. THERE WAS NO
13 STATEMENTS FROM THEM, THEY WEREN'T USED. I THINK THE COURT'S
14 ENTITLED TO DRAW THAT INFERENCE.

15 TAKING ALL THIS TOGETHER, WHAT WE COME DOWN TO IS THAT
16 UNDER THE LAW THERE HAS TO BE AN UNLAWFUL ACT OF VIOLENT INJURY TO
17 THE PERSON OF ANOTHER. WHAT WE HAVE IS CONFLICTING TESTIMONY AND
18 BASED ON THE CONFLICTING TESTIMONY I THINK THE COURT SHOULD HAVE
19 REASONABLE DOUBT BASED ON THOSE CONFLICTS ALONE. BUT GOING BEYOND
20 THAT WHAT IT SHOWS IT NOT AN UNLAWFUL ACT, BUT A LAWFUL ACT OF
21 TRYING TO SERVE A PAPER THAT WAS PERMITTED UNDER THE LEASE AND
22 PERMITTED UNDER THE LAW, SERVING NOTICE THAT WAS LAWFUL. SO IT WAS A
23 LAWFUL ACT AND THERE WAS NO INJURY, VIOLENT OR OTHERWISE.

24 I UNDERSTAND THAT THE CITY'S GOING TO TALK ABOUT AS
25 THEY'VE BROUGHT UP IN THEIR CASE IN CHIEF TALK ABOUT UNWANTED. AND

1 UNWANTING TOUCHING NOT RISING TO A LEWD ACT OR OTHER ISSUES - YOU
2 KNOW, WE'VE GOT A.B.H.A.N. ISSUES ABOUT UNWANTING TOUCHING A FEMALE
3 FOR LEWD PURPOSES, THAT SORT OF THING, BUT WHEN YOU ARE TALKING
4 INJURY FOR A SIMPLE ASSAULT AND BATTERY UNWANTED TOUCHING MAY BE
5 A CIVIL VIOLATION AND IT MAY BE THAT SHE HAS A RIGHT TO SUE HER IN
6 MAGISTRATE'S COURT BUT AS FAR AS A CIVIL - EXCUSE ME - AS FAR AS A
7 CRIMINAL CASE THE OFFICER CAME OUT THERE, TALKED TO EVERYBODY ON
8 THE SCENE AT THE TIME, MADE THAT DETERMINATION. I THINK THAT WAS THE
9 RIGHT DETERMINATION. I THINK WHEN WE LOOK AT ALL THIS EVIDENCE
10 THERE'S CONFLICTS, THERE'S QUESTIONS, THERE'S DOUBTS AND IT'S CLEAR --
11 WHAT IS CLEAR IS THAT THE DEFENDANT, DR. FALTAS, WAS TRYING TO DO A
12 LAWFUL ACT AND DID NOT CAUSE ANY INJURY, NO MATTER HOW UNWANTED
13 THAT TOUCHING MAY OR MAY NOT HAVE BEEN, THERE WAS NO INJURY. THIS IS
14 NOT AN ASSAULT CASE. NOT A CRIMINAL ASSAULT CASE. WHATEVER
15 HARRASSMENT ISSUES AND ALL THOSE OTHER ISSUES, HOWEVER FRUSTRATING
16 TO MS. STEELE, THIS WHOLE SERIES OF EVENTS MAY HAVE BEEN THIS
17 PARTICULAR CRIMINAL CHARGE IS NOT WARRANTED UNDER THESE FACTS AND
18 CIRCUMSTANCES. THIS PARTICULAR CHARGE THE DEFENDANT SHOULD BE
19 FOUND NOT GUILTY. I BELIEVE THERE IS REASONABLE DOUBT. I THINK IT IS
20 APPROPRIATE FOR THE COURT - AND I UNDERSTAND THE COURT FOUND
21 PROBABLE CAUSE OR SOME EVIDENCE AT THE DIRECTED VERDICT STAGE, BUT
22 NOW AT THE PROOF BEYOND A REASONABLE DOUBT STAGE WHETHER THERE IS
23 PROBABLE CAUSE - NOT ARGING ABOUT PROBABLE CAUSE, HER TESTIMONY
24 WAS PROBABLE CAUSE -- BUT PROOF BEYOND A REASONABLE DOUBT I THINK
25 THE COURT SHOULD FIND THAT THERE IS REASONABLE DOUBT, THAT THIS IS

1 NOT A CRIMINAL MATTER, THAT THIS IS A NOT GUILTY. AND I WOULD ASK THE
2 COURT TO FIND THERE IS REASONABLE DOUBT AND FIND HER NOT GUILTY.

3 THE COURT: THANK YOU, SIR. MR. FERNANDEZ.

4 MR. FERNANDEZ: YES, YOUR HONOR. THANK YOU. MAY IT
5 PLEASE THE COURT.

6 THE COURT: YES, SIR.

7 MR. FERNANDEZ: I'M GOING TO HAND UP SINCE THIS IS SORT OF A
8 COMBINED LITTLE THING. THESE ARE CHARGES THAT I WOULD HAVE
9 REQUESTED THAT YOUR HONOR READ TO THE JURY AND YOUR HONOR IS
10 LIKELY ALREADY FAMILIAR WITH A LOT OF THE DEFINITIONS THERE. COUNSEL
11 SPENT MUCH TIME TALKING ABOUT THE DIFFERENCE BETWEEN CRIMINAL
12 DEFINITION AND CIVIL DEFINITION. IN SOUTH CAROLINA THE DEFINITIONS OF
13 ASSAULT AND BATTERY ARE INTERCHANGABLE. THERE ARE MANY
14 DEFINITIONS AND THEY ALL PROVIDE SOME INSIGHT AS TO WHAT IS AND IS NOT
15 PERMITTED. JUST BECAUSE IT'S CIVIL OR CRIMINAL THAT REALLY HAS TO DO
16 WITH THE BURDEN OF PROOF RATHER THAN THE ACTUAL DEFINITION OF WHAT
17 CONSTITUTES AN ASSAULT.

18 I WOULD DIRECT YOUR HONOR'S ATTENTION TO STATE V. JONES
19 AND ARGUE THAT HEAD-ON. THE DEFINITION OF A SIMPLE ASSAULT AND
20 BATTERY DOES SAY UNLAWFUL VIOLENT INJURY TO THE PERSON AND A LOT OF
21 COUNSEL'S ARGUMENT -- IN FACT, ALMOST ALL OF IT -- ALMOST CONCEDES
22 THAT THERE MAY HAVE BEEN A TOUCHING AND THAT THE FACT THAT IT
23 WASN'T VIOLENT MEANS IT WASN'T CRIMINAL. WELL, IF TAKEN IN A VACCUM
24 WHAT DOES VIOLENT INJURY MEAN. WELL, WE KNOW WHAT IT MEANS
25 BECAUSE IF YOU READ WHAT THE A.B.H.A.N. DEFINITION IS, WHICH IS RIGHT

1 BELOW IT, THEY GO FURTHER AND ADD THE ADDITIONAL REQUIREMENT OF
2 INFLECTION OF SERIOUS BODILY INJURY. I THINK THAT'S IMPORTANT BECAUSE
3 IN THE SIMPLE ASSAULT AND BATTERY THEY DON'T HAVE ANY REQUIREMENT
4 FOR BODILY INJURY. A VIOLENT INJURY JUST MEANS THAT IT'S SOMETHING
5 THAT IS FORCEFUL AND UNWANTED. AND AN INJURY CAN BE ANYTHING FROM
6 A FLICK OF A WRIST TO A STABBING IN THE HEART. THE A.B.H.A.N. DISCUSSES
7 WHAT IS - WHAT COUNSEL IS ARGUING IS VIOLENT INJURY. THE SIMPLE
8 ASSAULT SIMPLY SAYS IT'S A GENERIC TERM, THAT IT CAN BE A WIDE RANGE OF
9 THINGS. FURTHER CLARIFIED BY LATER CASE LAW IN THE CHARGES THAT I DID
10 PRESENT TO YOUR HONOR.

11 WHAT WE HAVE HERE IS TESTIMONY FROM - AND I'LL ALSO
12 ARGUE AND I KNOW THIS IS A BENCH TRIAL SO OUT OF RESPECT OF COUNSEL'S
13 CLOSING I DIDN'T OBJECT DURING IT BECAUSE I KNOW YOUR HONOR IS
14 CAPABLE OF SIFTING THROUGH WHAT IS AND ISN'T RELEVANT. I WOULD
15 ASSERT THAT IT IS ENTIRELY RELEVANT FOR THE COURT TO CONSIDER THE
16 CHARGING PROCESS BY WHICH THIS CHARGE HAS COME TO YOUR HONOR. THE
17 COURTESY SUMMONS SYSTEM WAS CREATED FOR A REASON. IT WAS CREATED
18 LARGELY TO PROTECT THE DEFENDANTS. THE FACT THAT AN OFFICER DID NOT
19 WITNESS AN ASSAULT AND WHO WAS NOT ABLE TO EVEN DISCUSS THE MATTER
20 WITH THE DEFENDANT, DID NOT DECIDE TO ARREST HER, CANNOT BE HELD
21 AGAINST SOMEHOW THE STATE. THE PROCESS WAS CORRECT, IT WAS
22 APPROPRIATE. A COURTESY SUMMONS AND THIS CASE WAS ABSOLUTELY
23 APPROPRIATE. THAT'S JUST NOT TO BE CONSIDERED AS FAR AS INNOCENCE OR
24 GUILT. AS FAR AS INNOCENCE OR GUILT ARE CONCERNED, WE HAD TWO
25 WITNESSES, DINAH STEELE, CHARLENE CROUCH. BOTH TESTIFIED GENERALLY

1 TO THE SAME THING. THERE WAS A PUSHING, THERE WAS A SHOVING. ALL
2 COUNSEL CAN ARGUE IS THE SEVERITY OF IT BUT IT'S CLEAR THAT THE
3 DEFENDANT DID INITIATE IT, DID APPROACH MS. STEELE WHO WAS NOT
4 INTERESTED IN ANY CONTACT WITH HER WHATSOEVER. WHETHER SHE BACKED
5 AWAY OR WAS PUSHED AWAY, THE RESULT WAS THE SAME. AND DEFENDANT'S
6 TESTIMONY WAS LITTERED WITH -- VERY LITTLE OF IT ACTUALLY COVERED --
7 SINCE SHE DID DECIDE TO PRESENT A CASE, VERY, VERY LITTLE OF IT
8 ACTUALLY COVERED SEPTEMBER 11TH, 2009. A LOT OF IT COVERED ALL THIS
9 OTHER RANDOM STUFF. I WOULD ARGUE THAT IN NO WAY, SHAPE OR FORM
10 DOES THAT CONSTITUTE REASONABLE DOUBT BECAUSE, FIRST OF ALL, IT'S NOT
11 REASONABLE, IT'S FANTASTIC. IT'S JUST CONSPIRACY THEORIES AND
12 CONJECTURE AND SPECULATION THAT WE'VE SEEN BEFORE BUT IT IS NO WAY
13 REASONABLE. THERE'S NOTHING REASONABLE ABOUT IT WHICH IS THE
14 DEFINITION OF WHAT YOUR HONOR IS GOING TO ASSESS. SO I WOULD SAY IF WE
15 WEIGHING THE CREDIBILITY OF THE WITNESSES, CHARLENE CROUCH AND
16 DINAH STEELE HAVE ENDURED, AS COUNSEL EVEN CONCEDED, HAVE ENDURED
17 MUCH DIFFICULTIES IN DEALING WITH MARIE FALTAS. THE FACT THAT THEY
18 ARE HERE TODAY AND CAME FORWARD AND SAW THESE CASES THROUGH TO
19 THEIR CONCLUSION CERTAINLY SPEAKS TO THEIR CHARACTER. DINAH STEELE
20 FOR WHATEVER YOU WANT TO ARGUE, WHATEVER COUNSEL WANTS TO ARGUE
21 ABOUT. WHATEVER MOTIVATIONS OR CHANGING IN THE STORY, WE HAVE AN
22 INDEPENDENT WITNESS WHO HAS NO DOG IN THE FIGHT, WHO APPARENTLY
23 WAS -- EVEN THE DEFENDANT TESTIFIED THAT WAS ON GOOD TERMS WITH HER,
24 SPEAKING TERMS. THEY WERE EXCHANGING STORIES. CHARLENE CROUCH HAS
25 NO REASON TO COME HERE AND SAY ANYTHING, SAW EVERYTHING IN PLAIN

1 SIGHT, SAW EXACTLY WHAT DINAH STEELE SAW WHICH IS THE SHOVING,
2 FORCEFUL SHOVING THAT ACTUALLY PUSHED MS. STEELE BACK THREE TIMES.
3 EVERYTHING IS CONSISTENT. I WOULD ARGUE THAT NOTHING THAT HAS BEEN
4 PRESENTED TODAY IN ANY WAY, SHAPE OR FORM EVEN COMES REMOTELY
5 CLOSE TO REASONABLE DOUBT. ANY DOUBT IS FANTASTIC OR SPECULATIVE.
6 THE ONLY TESTIMONY WE HAVE THAT'S CREDIBLE IS THE FACT THAT SHE DID
7 PUSH THE PERSON AND THAT THAT WAS UNJUSTIFIED, UNWARRANTED AND
8 UNWELCOMED AND THAT IT DID CAUSE INJURIES, BOTH PHYSICAL AS FAR AS
9 BEING UNWANTINGLY TOUCHED AND MENTAL AS A RESULT OF IT. I THINK IT'S
10 ABSOLUTELY APPROPRIATE FOR A GUILTY VERDICT. THANK YOU, YOUR
11 HONOR.

12 THE COURT: THANK YOU. MADAM CLERK, I WOULD LIKE TO
13 MARK WHAT HAS BEEN HANDED TO ME BY BOTH COUNSEL. JUST MAKE THEM
14 COURT EXHIBITS SO THAT IF THIS IS REVIEWED AT SOME POINT THE RECORD
15 WILL BE FULL OF WHAT WAS HANDED TO ME DURING CLOSINGS. ALL RIGHT, I
16 AM GOING TO GO AND CONSIDER EVERYTHING THAT I'VE HEARD AND I WILL
17 MAKE A RULING MOMENTARILY. PLEASE STAND AT EASE.

18 (MATERIAL IS MARKED AS COURT'S EXHIBITS)

19 (RECESS)

20 (COURT RESUMES)

21 THE COURT: I HAVE CONSIDERED ALL THE EVIDENCE THAT HAS
22 BEEN PLACED INTO THE RECORD, THE TESTIMONY THAT'S BEEN PROVIDED. I
23 HAVE HEARD ARGUMENTS FROM COUNSEL. I HAVE REVIEWED THE LAW ON
24 THIS CHARGE AND CONSIDERED THE CASE LAW, WHETHER IT BE IN THE CASE
25 THAT WAS HANDED UP BY COUNSEL AND/OR THE JURY CHARGES PROVIDED BY

1 THE STATE. HAVING CONSIDERED IT ALL, IT IS MY VERDICT IN THIS MATTER
2 THE DEFENDANT IS GUILTY OF ASSAULT AND BATTERY. SIMPLE ASSAULT AS
3 DEFINED BY THE CITY CODE. WE WILL ADDRESS SENTENCING ON THAT, ON THE
4 UNLAWFUL ACTS GUILTY VERDICT BY THE PRIOR JURY AND HAVE THE
5 CONTEMPT ISSUE ADDRESSED AT THREE O'CLOCK AS PREVIOUSLY SCHEDULED.
6 IS THERE ANYTHING BEFORE THE COURT AT THIS TIME?

7 MR. LUPTON: YES, YOUR HONOR. I WOULD ASK THE COURT TO
8 ANNOUNCE OR CLARIFY ITS DEFINITION OF ASSAULT THAT WAS USED.

9 THE COURT: I USED THE DEFINITION OF ASSAULT PURSUANT TO
10 THE LAW. AND I DON'T THINK YOU GET TO GO BACK AND ASK THE JURY WHAT
11 THEY WOULD DO AND I'M NOT GOING TO GET INTO GOING THROUGH THAT
12 EITHER. GO AHEAD.

13 MR. LUPTON: YOUR HONOR, RESPECTFULLY I UNDERSTAND
14 THAT. HOWEVER, HAD THIS BEEN A JURY TRIAL, THE CHARGING CONFERENCE
15 WOULD HAVE - IT WOULD HAVE BEEN A CHARGE ON THE LAW SO I'M ASKING
16 THE COURT WHAT CHARGE ON THE LAW DID THE COURT CONSIDER -

17 THE COURT: THE COURT AS STATED BEFORE I PRONOUNCED MY
18 VERDICT CONSIDERED ALL THE LAW THAT WAS PROVIDED, ALL OF WHICH I
19 WOULD HAVE CHARGED TO THE JURY AND ALLOWED THEM TO RENDER A
20 VERICT PURSUANT THERETO. ALL OF THE LAW THAT WAS GIVEN WAS PROPER
21 LAW AND HAS BEEN ATTACHED TO THIS RECORD FOR FUTURE APPEAL.

22 MR. LUPTON: THANK YOU, YOUR HONOR.

23 THE COURT: THANK YOU. ANYTHING FURTHER?

24 MR. FERNANDEZ: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. SEE YOU AT THREE O'CLOCK.

1 (RECESS)

2 (COURT RESUMES AT 3:00 P.M.)

3 **THE COURT:** ALL RIGHT. WE ARE ON THE RECORD REGARDING
4 DR. MARIE FALTAS. CASE IS 201310 WHICH IS THE UNLAWFUL ACTS CASE IN
5 WHICH SHE WAS REPRESENTED BY DR. BRIGGS – EXCUSE ME. MR. BRIGGS. THIS
6 IS THE SENTENCING HEARING WHICH WAS PREVIOUSLY SCHEDULED. MR.
7 BRIGGS WAS ADVISED VERBALLY. A WRITTEN ORDER WAS ALSO ISSUED THAT
8 WAS DELIVERED TO DR. FALTAS AND FAXED TO MR. BRIGGS’ OFFICE. MR.
9 FERNANDEZ, I’M HAPPY TO HEAR FROM YOU ON SENTENCING IN THIS CASE.

10 **MR. FERNANDEZ:** THANK YOU, YOUR HONOR. MR. HATCHER IS
11 PRESENT FOR THE CITY AND HE PROVIDED ME WITH THESE PICTURES JUST NOW.
12 THOSE ARE TODAY. IT JUST GOES TO SHOW THAT THE PROBLEM HAS NOT EVEN
13 REMOTELY CORRECTED AND MAY IN FACT BE WORSE. I DID MAKE A
14 RECOMMENDATION EARLIER. IN LIGHT OF THE DEFENDANT’S DEFIANCE THAT
15 HAS BEEN RELATED TO ME EITHER ON THE RECORD OR THROUGH HER COUNSEL,
16 IT DOESN’T APPEAR THAT SHE’S INCLINED TO CLEAN IT UP. ULTIMATELY THE
17 CITY WOULD LOVE TO BE ABLE TO HAVE HER CLEAN IT UP ON HER OWN
18 WITHOUT US HAVING TO GO OVER THERE OR WITHOUT US HAVING TO FILE A
19 CIVIL ACTION. AND THE ONLY WAY TO ACCOMPLISH THAT IS THROUGH COURT
20 ORDER. WHAT MY RECOMMENDATION WOULD BE IS FIFTEEN DAYS IN JAIL ON
21 THE FRONT END SO LET HER GET A TASTE OF JAIL WHICH SHE LIKELY WILL NOT
22 BE HAPPY ABOUT. THEN FIFTEEN ON THE BACK END THAT COULD BE
23 SUSPENDED ON HER CLEANING AND MAINTAINING CLEAN PROPERTY FOR A
24 YEAR – CLEAN BEING GRASS AND SOIL. I THINK IF THAT’S THE CARROT AND THE
25 STICK TYPE THING THAT MAY WORK ALTHOUGH THIS WILL LIKELY BE TIED UP

1 IN APPEALS FOR SOME TIME. A CIVIL ACTION MAY BE NECESSARY ANYWAYS
2 BUT THAT'S THE ONLY THING I COULD THINK OF THAT MIGHT ENCOURAGE HER
3 TO CLEAN IT UP.

4 (PHOTOGRAPHS MARKED AS COURT'S EXHIBIT)

5 THE COURT: ALL RIGHT. MR. LUPTON, YOU DID NOT REPRESENT
6 THIS CHARGE. I'M NOT ASKING YOU TO SPEAK IF YOU ARE NOT APPOINTED ON
7 THIS ONE.

8 MR. LUPTON: I WAS APPOINTED AS THE COURT IS AWARE AND I
9 WAS RELIEVED BY ORDER OF THE APPOINTING COURT WHEN MR. BRIGGS
10 SUBSTITUTED IN. SO HE WAS THE TRIAL COUNSEL AND WOULD BE THE
11 APPROPRIATE ONE AT THIS STAGE. I WAS STEPPING OUT TO SEE IF I COULD -

12 THE COURT: I'LL LET YOU TAKE ONE MORE WALK. GO TAKE A
13 LOOK.

14 (PAUSE)

15 MR. LUPTON: YOUR HONOR, HAVING STEPPED OUT AND LOOKED
16 AROUND I COULD NOT SEE MR. BRIGGS. I CALLED HIS OFFICE.

17 (INAUDIBLE)

18 THE COURT: WHO PULLED UP?

19 MR. LUPTON: DR. FALTAS.

20 THE COURT: DR. FALTAS.

21 MR. LUPTON: I CALLED HIS OFFICE AND GOT VOICE MAIL. DID
22 NOT LEAVE A MESSAGE AND AS I WAS WALKING BACK IN I SAW DR. FALTAS'
23 CAR PULLING UP.

24 THE COURT: OKAY. WELL, THOUGH THE COURT DOESN'T HAVE
25 TO, I AM GOING TO GIVE HER A COUPLE OF MINUTES TO GET IN HERE.

1 (PAUSE)

2 THE COURT: DR. FALTAS, WE ARE ON THE RECORD ON THE
3 UNLAWFUL ACTS CASE. WE WILL ALLOW YOU TO DO ALL OF THE ARGUING
4 NECESSARY OR INFORMATION PROVIDED FROM A SEATED POSITION AS YOU
5 DID IN THE TRIAL TODAY. THE CITY HAS PRESENTED SOME PICTURES OF THE
6 PROPERTIES AND I'VE MARKED THEM AS COURT'S EXHIBIT AND WE ARE GOING
7 TO ASK MR. LUPTON, EVEN THOUGH HE DIDN'T REPRESENT YOU ON THESE
8 CHARGES, TO COME GET THEM AND HAND THEM TO YOU SO YOU DON'T JUST
9 HAVE TO WALK UP TO THE BAR. AND AFTER YOU LOOK AT THEM I AM GOING TO
10 ASK THE CITY ATTORNEY TO RESTATE HIS RECOMMENDATION WHICH I'M NOT
11 BOUND BY BUT I WANT YOU TO BE ABLE TO HEAR WHAT HE RECOMMENDED
12 AND THEN I'LL BE HAPPY TO HEAR FROM YOU.

13 DEFENDANT FALTAS: MAY I SIT, YOUR HONOR.

14 THE COURT: YES, MA'AM. ONE OF THE FIRST THINGS I SAID IS
15 YOU ARE ALLOWED TO DO IT FROM A SEATED POSITION LIKE YOU DID IN THE
16 TRIAL TODAY.

17 DEFENDANT FALTAS: AND MAY I EXPLAIN THAT I HAVE FEVER. I
18 HAVE TO CHANGE - I'M NOT WELL AT ALL.

19 THE COURT: OKAY. PLEASE HAVE A SEAT.

20 DEFENDANT FALTAS: THANK YOU.

21 THE COURT: HAVE YOU TAKEN A CHANCE TO LOOK AT THE
22 PICTURES?

23 DEFENDANT FALTAS: I'M SORRY?

24 THE COURT: PLEASE LOOK AT THE PICTURES.

25 DEFENDANT FALTAS: THESE ARE FROM YESTERDAY? FROM

1 FROM YESTERDAY?

2 THE COURT: ARE THEY FROM YESTERDAY, MR. FERNANDEZ?

3 MR. HATCHER: THIS SHOULD BE TODAY'S DATE.

4 THE COURT: TODAY'S DATE. OKAY.

5 DEFENDANT FALTAS: WELL, YOUR HONOR, AS YOU CAN SEE
6 YESTERDAY I WENT AND HAD THE GRASS CUT. ACTUALLY, YOU KNOW, -- I'M
7 SORRY. AM I ALLOWED TO SPEAK YET?

8 THE COURT: WELL, LET ME TELL YOU WHAT WE OUGHT TO DO.
9 THOSE ARE PICTURES FROM YESTERDAY. MR. FERNANDEZ MADE A
10 RECOMMENDATION WHICH IS A PART OF THE RECORD. SINCE YOU WERE NOT
11 HERE, I'M GONG TO ASK FOR HIM TO REPEAT IT. WOULD YOU PLEASE REPEAT IT,
12 MR. FERNANDEZ?

13 MR. FERNANDEZ: THANK YOU, YOUR HONOR. LET ME PREMISE
14 THIS ON DESPITE THIS IS A RECOMMENDATION, CERTAINLY I HAVE NO PROBLEM
15 DEFERRING TO THE COURT'S BEST JUDGMENT IN ANY OF THESE MATTERS SO
16 THIS IS JUST WHAT I THOUGHT OF. I UNDERSTAND THAT THE COURT DOESN'T
17 HAVE TO ACCEPT IT AND I'M PERFECTLY FINE WITH T HAT.

18 THE COURT: YES, SIR.

19 MR. FERNANDEZ: WHAT THE CITY WOULD ASK FOR IS -- AS THE
20 PICTURES DO SHOW THE PROBLEM HAS NOT BEEN CORRECTED. THERE'S NO
21 INDICATION IT WILL BE CORRECTED. ULTIMATELY, THE CITY'S INTEREST IS
22 HAVING THE PLACE CLEANED UP AND BY CLEAN WE MEAN ONLY GRASS AND
23 SOIL REMAINING. TO THE EXTENT WE THINK THAT THAT'S ABLE TO BE
24 ACCOMPLISHED, THE CITY WOULD RECOMMEND FIFTEEN DAYS IN JAIL ON THE
25 FRONT END. ONCE SERVICE OF THAT IS COMPLETED, A FIFTEEN DAY SENTENCE

1 REMAINING ON THE BACK END, SUSPENDED ON CLEANUP OF THE PROPERTY
2 AND MAINTAINING THE CLEANUP FOR ONE YEAR. IF THOSE TERMS ARE
3 ACCOMPLISHED THEN THE FIFTEEN DAYS ON THE BACK END WOULD NOT NEED
4 TO BE SERVED.

5 THE COURT: THAT IS THE CITY'S RECOMMENDATION. NOW IT'S
6 YOUR TIME TO TALK, DR. FALTAS.

7 DEFENDANT FALTAS: WELL, YOUR HONOR, I THINK OF WHAT - I
8 HAD E-MAILED YOUR HONOR BY MISTAKE BECAUSE, YOU KNOW, THE E-MAIL
9 SYSTEM SOMETIMES JUST AUTOMATICALLY PUTS - YOU KNOW, BECAUSE WHEN
10 IT SAID PLEASE FORWARD THIS TO JUDGE SOLOMON TO MY LAWYERS IT
11 AUTOMATICALLY PUT YOUR E-MAIL ADDRESS ON IT. I HAD BASICALLY
12 DELETED MR. FERNANDEZ'S E-MAIL ADDRESS SO THIS MISTAKE DOESN'T
13 HAPPEN. BUT IN ANY EVENT I HAVE A MOTION FOR A NEW TRIAL AND I ALSO
14 HAVE THE MOTION TO VACATE THE CONTENT. MAY I - IS THIS THE TIME TO
15 ARGUE?

16 THE COURT: YOU WANT TO DO A - WELL, WHERE IS MR. BRIGGS?

17 DEFENDANT FALTAS: YOUR HONOR, ONCE AGAIN I HAVE NO
18 CONTROL OVER HIM.

19 THE COURT: OKAY. WE ARE NOT DOING THE CONTEMPT YET. WE
20 ARE DOING SENTENCING ON THE UNLAWFUL ACTS.

21 DEFENDANT FALTAS: I HAVE A MOTION FOR A NEW TRIAL ON THE
22 UNLAWFUL ACTS AND I DON'T KNOW IF I EVER ENDED UP GIVING YOUR HONOR
23 SEVERAL COPIES OF FLORIDA V. JARDINES OR NEVER DID.

1 **THE COURT:** WE'LL MAKE IT A PART OF THE RECORD. HAND
2 WHATEVER MOTION YOU'VE GOT ON A NEW TRIAL. MR. LUPTON, IF YOU'LL
3 BRING IT OVER. DO YOU HAVE COPIES FOR MR. FERNANDEZ?

4 **DEFENDANT FALTAS:** YES, YOUR HONOR, I DO.

5 **MR. LUPTON:** YOUR HONOR, I BELIEVE THAT'S MR. BRIGGS. I
6 DON'T HAVE MY GLASSES ON.

7 **THE COURT:** COME ON IN. COME ON IN, MR. BRIGGS. AS MR.
8 BRIGGS IS HERE, MR. LUPTON, WHEN HE GETS UP HERE, LET HIM GET THOSE
9 INSTEAD OF YOU AND HE'LL ADDRESS THESE ISSUES.

10 **MR. LUPTON:** YOUR HONOR, I WILL GIVE UP MY SEAT.

11 **DEFENDANT FALTAS:** BUT THAT'S AN ANDERS BRIEF.

12 **THE COURT:** SLOW DOWN, DR. FALTAS. LET MR. BRIGGS SIT
13 DOWN. LET'S CATCH HIM UP LIKE WE CAUGHT YOU UP A FEW MINUTES AGO
14 WHEN YOU CAME IN LATE AND THEN LET'S CONTINUE.

15 **DEFENDANT FALTAS:** YOUR HONOR –

16 **THE COURT:** JUST WAIT. MR. BRIGGS, WE ARE ON THE RECORD ON
17 THE UNLAWFUL ACTS SENTENCING. MR. FERNANDEZ HAS MADE A
18 RECOMMENDATION NOW TWICE. I AM GOING TO ASK HIM TO MAKE IT A THIRD
19 TIME SO THAT YOU HEAR IT AS WELL SO THAT YOU ARE AWARE OF IT. ONCE HE
20 DOES THAT, DR. FALTAS HAS A MOTION SHE WANTS FILED AND I'M GOING TO
21 LET HER TELL US WHAT THAT IS AND IT SHOULD BE IN FRONT OF YOU WITH A
22 FEW COPIES RIGHT THERE. MR. FERNANDEZ, WILL YOU STATE YOUR
23 RECOMMENDATION AGAIN?

24 **MR. FERNANDEZ:** THANK YOU, YOUR HONOR. THE
25 RECOMMENDATION FROM THE CITY WILL BE FIFTEEN DAYS SERVICE IN JAIL ON

1 THE FRONT END. THE REMAINING FIFTEEN DAYS BE SUSPENDED UPON
2 CLEANING UP THE PROPERTY, REMOVING ALL OBJECTS LEAVING ONLY SOIL
3 AND GRASS SUSPENDED ON CLEANING UP THE PROPERTY FOR ONE YEAR.

4 **THE COURT:** IN ADDITION TO THAT RECOMMENDATION, MR.
5 BRIGGS, MR. FERNANDEZ PROVIDED PICTURES THAT HAVE BEEN MARKED AS A
6 COURT'S EXHIBIT SO THAT EVERYTHING THAT I'VE SEEN IS A PART OF THE
7 RECORD AND THEY ARE IN FRONT OF DR. FALTAS. DR. FALTAS, WILL YOU HAND
8 THOSE TO MR. BRIGGS SO THAT HE MAY REVIEW THEM?

9 **DEFENDANT FALTAS:** I HAVEN'T FINISHED REVIEWING THEM BUT
10 AS YOUR HONOR -

11 **MR. BRIGGS:** DO WHAT HE TELLS YOU TO DO.

12 **THE COURT:** LET MR. BRIGGS LOOK AT THEM, PLEASE.

13 **DEFENDANT FALTAS:** AS YOUR HONOR KNOWS I HAVE BEEN
14 VERY, VERY ILL SINCE THE LAST TIME. IN FACT, I WAS ILL THE LAST TIME. I'M
15 FACING LIFE THREATENING CONDITONS. NONETHELESS, YOU CAN SEE THAT
16 THE GRASS HAS BEEN CUT (INAUDIBLE). THERE (INAUDIBLE) THING TO DO. YOU
17 CAN ALSO SEE THAT THERE ISN'T A SINGLE BUCKET THAT'S INVERTED AND
18 HOLDING WATER. THEY ARE ALL UPRIGHT AND YOU CAN SEE THAT THE LIDS
19 ARE BACK ON. ALSO, I WANT TO SAY THAT YESTERDAY I HAILED SOMEBODY
20 FROM THE STREET TO CUT THE GRASS AND MS. STEELE WAS THERE AND I SAID I
21 WAS JUST GOING TO GO TO THE POST OFFICE BUT DON'T TALK TO HER AND BY
22 THE TIME I CAME BACK THAT PERSON WITH THE TRACTOR WAS DONE. SO
23 THANK GOD I WAS ABLE TO FIND SOMEBODY ELSE. SO IT'S JUST PHYSICALLY
24 NOT POSSIBLE FOR ME TO HAVE DONE ANYTHING FROM THE TIME OTHER THAN
25 TO HIRE SOMEBODY TO CUT THE GRASS. IT'S ALSO - I AM VERY UNCLEAR WHAT

1 IS THAT THEY DON'T WANT. HE SAYS NOTHING BUT GRASS AND DIRT. DOES
2 THIS MEAN THAT I HAVE TO ALSO REMOVE THE SIGN THAT SAYS PRIVATE
3 PROPERTY, NO TRESPASS. I MEAN THIS - AND YOU HAVE PLENTY OF MEDICAL
4 EVIDENCE THAT I WAS VERY ILL AND I STILL AM. IN FACT, YOUR HONOR, I AM
5 SCHEDULED FOR AN M.R.I. BECAUSE IT SEEMS THAT MY RIGHT KNEE HAS ALSO
6 FRACTURED. I WOULD LIKE FOR THERE TO BE REASONABLE TIME, NO JAIL TIME,
7 AND SOMETHING SPECIFIC AS TO WHAT IT IS I CANNOT HAVE. SOMETHING
8 SPECIFIC. BUT REALLY, YOUR HONOR, THE PROPER WAY IS NOT TO BRING
9 CRIMINAL CHARGES AND THEN TO SUGGEST JAIL. THE PROPER WAY IS TO GO TO
10 CIRCUIT COURT WHICH IS NEUTRAL AND GET AN INJUNCTION. IN ADDITION,
11 THERE IS QUESTION WHETHER THE CHARGE CARRIES JAIL TERM AT ALL. AND
12 WE'VE BEEN THROUGH THIS AND THERE HASN'T BEEN AN INTERPRETATION.

13 THE COURT: IN ADDITION TO THE INFORMATION YOU PROVIDED,
14 YOU ALSO INDICATED YOU HAD A MOTION.

15 DEFENDANT FALTAS: YES, YOUR HONOR.

16 THE COURT: WILL YOU PLEASE TELL MR. BRIGGS WHAT YOUR
17 MOTION IS SO HE CAN ADDRESS IT.

18 MR. BRIGGS: YOUR HONOR, I THINK I MIGHT WOULD BE MORE
19 HELP IF I WOULD TELL YOU WHAT THE STATUS OF US GETTING THE PLACE
20 CLEANED UP FIRST AND THEN LET HER DO THE MOTION.

21 THE COURT: THAT'S FINE.

22 MR. BRIGGS: IT MIGHT HELP THE COURT.

23 THE COURT: ALL RIGHT.

24 MR. BRIGGS: YOUR HONOR, I APOLOGIZE FOR BEING LATE BUT I
25 TOLD YOU I'M ONE OF THOSE GUYS THAT ALWAYS GETS CAUGHT. I TURNED

1 LEFT ON THE STREET, DOWN ON HUGER STREET, TO COME UP HERE WHICH HAS
2 GREEN GOING STRAIGHT BUT RED NOT GOING LEFT?

3 THE COURT: YES, SIR.

4 MR. BRIGGS: AND I GOT CAUGHT.

5 THE COURT: IF YOU WOULD HAND THAT TO HER SO YOU WON'T
6 HAVE TO LEAN OVER SO FAR AND SHE'LL GIVE IT TO ME. THANK YOU, SIR.

7 MR. BRIGGS: AND I ALWAYS GET CAUGHT, YOUR HONOR. I GUESS
8 I SHOULD QUIT DOING THOSE KIND OF THINGS.

9 THE COURT: MADAM CLERK, IF YOU WOULD MARK THAT AS A
10 COURT'S EXHIBIT AS WELL SO IT WILL ALSO BE ATTACHED TO THE RECORD.

11 (MARKED AS COURT'S EXHIBIT)

12 MR. BRIGGS: YOUR HONOR, I TOLD YOU THAT I WAS CONFIDENT
13 THAT I COULD FIND A WAY OF GETTING THE PROPERTY CLEANED UP BY
14 PUTTING EVERYTHING OUT THERE IN A STORAGE SHED, YOUR HONOR. I COULD
15 HELP THE COURT WITH THE THING. WHAT I DID WAS WRITE THE PRESIDENT OF
16 MY SUNDAY SCHOOL CLASS. MY CHURCH IS VERY WELL KNOWN OUT IN
17 LEXINGTON FOR DOING BENEVOLENT STUFF. WE IN FACT HAVE THAT - I THINK I
18 MENTIONED IT BEFORE BUT WE HAVE THAT RECOVERY PROGRAM FOR FOLKS
19 WHO HAVE EMOTIONAL PROBLEMS - NOT JUST ALCOHOLICS. IT'S A TWELVE-
20 POINT PROGRAM BUT IT IS NOT A CHURCH PROGRAM. THEY JUST HOLD THEIR
21 MEETINGS IN CHURCHES USUALLY BECAUSE THERE'S FREE RENT AND THE
22 CHURCH PROVIDES A SUPPER FOR THEM, YOUR HONOR, ON TUESDAY NIGHT. SO
23 WE HAVE A LONGSTANDING HISTORY OF GETTING THINGS LIKE THIS DONE. MY
24 PROBLEM IS THAT THE PRESIDENT OF MY SUNDAY SCHOOL CLASS IS IN FLORIDA
25 ON ONE OF THOSE TOUGH ASSIGNMENTS. HE WORKS FOR ONE OF THESE LARGE

1 PAPER COMPANIES.

2 THE COURT: YES, SIR.

3 MR. BRIGGS: WON'T MENTION NAME BUT HE'S HAVING TO
4 ENTERTAIN HIS CUSTOMERS ALL WEEKEND. YOU KNOW, TOUGH DUTY BUT
5 THAT'S WHERE HE IS.

6 THE COURT: YES, SIR.

7 MR. BRIGGS: AND I CALLED HIS WIFE THIS MORNING AND TOLD
8 HER I WANTED HIM TO READ THE E-MAIL. I'M NINETY PERCENT SURE THAT THE
9 CHURCH WILL - MY SUNDAY SCHOOL CLASS WILL GET THE JOB DONE, YOUR
10 HONOR, WITHIN A REASONABLE PERIOD OF TIME. AND I BELIEVE THAT TO THE
11 CORE.

12 THE COURT: OKAY.

13 MR. BRIGGS: IN ADDITION, I CALLED MY - I HAVE TWO SON-IN-
14 LAWS. BOTH OF THEM ARE SIX-FOUR AND BOTH OF THEM ARE IN THE BUILDING
15 BUSINESS, YOUR HONOR. I WON'T MENTION NAMES AGAIN, THAT'S NOT WHAT
16 IS IMPORTANT. BUT I CALLED ONE OF THEM THIS MORNING AND CALLED MY
17 DAUGHTER ON THE OTHER ONE AND SHE COMMITTED HIM AND A PERSON FROM
18 THE FAMILY THAT'S LIVING WITH THEM NOW THAT'S OUT OF WORK. SO I HAVE
19 THREE VERY LARGE WARM BODIES THAT CAN MOVE THAT STUFF INTO A
20 STORAGE ROOM. BUT THE ONLY PROBLEM I'VE GOT RIGHT NOW IS I HAVEN'T
21 FOUND THE STORAGE ROOM YET BECAUSE I'VE BEEN BUSY DOING OTHER
22 THINGS. BUT JUST SO THE COURT KNOWS THAT I'VE THOUGHT IT OUT VERY
23 SERIOUSLY. I'M CONFIDENT THAT A WRECKER SERVICE THAT HAS A FLATBED
24 UNIT, YOUR HONOR, COULD TRANSPORT ONE OF THOSE STORAGE BINS. I'M
25 TALKING ABOUT A TEN BY TEN, HUNDRED SQUARE FEET, YOUR HONOR. SO I

1 PUT THAT PART DOWN AT THE BOTTOM SO THE COURT KNOWS I HAVE TWO
2 WAYS OF GETTING THE JOB DONE, YOUR HONOR. OKAY?

3 AND I WON'T SAY HOW THIS SHOULD AFFECT THE SENTENCE, HOW
4 IT SHOULD AFFECT TIME YOU WOULD GIVE US OR ANYTHING ELSE BUT I JUST
5 WANTED THE COURT TO KNOW THAT THAT JOB WILL GET DONE. THAT MEANS
6 THERE WON'T BE ANY ANGLE IRONS THERE, THERE WON'T BE ANY BUCKETS
7 THERE, THERE WON'T BE ANYTHING ON THAT PROPERTY EXCEPT GRASS AND I
8 GUESS THE PRIVATE PROPERTY SIGN AND A STORAGE BIN, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. BRIGGS: SO I GIVE THAT - AND, OF COURSE, MR. FERNANDEZ
11 HAS A COPY OF THIS AND THAT WOULD BE MY ARGUMENT.

12 THE COURT: ALL RIGHT.

13 MR. BRIGGS: YOUR HONOR, I WOULD JUST SAY IN THE SENTENCE
14 I'VE BEEN DOING THIS FOR MORE THAN FORTY YEARS NOW AND I CANNOT
15 THINK OF ANOTHER CASE THAT I THINK IS LESS MERITORIOUS FOR SOMEBODY
16 TO ASK FOR JAIL TIME BECAUSE SOME LADY JUST HAD SOMETHING STUCK IN
17 HER CRAW AND THE CITY HAD SOMETHING STUCK IN THEIR CRAW AND HER
18 BEING IN JAIL WON'T PROVE - I WON'T SAY A BAD WORD 'CAUSE I DON'T USE
19 THOSE WORDS - BUT WON'T PROVE A THING, YOUR HONOR. IT WON'T PREVENT
20 ANOTHER PERSON FROM DOING IT. IT WILL CAUSE HER A LOT OF DISTRESS AND
21 I DID IN FACT TALK TO HER DOCTOR AND I GUESS - DID YOU GIVE HIM THE
22 SECOND NOTE FROM THE DOCTOR? WELL, SHE'S GOT A SECOND NOTE. SHE
23 PICKED IT UP HERSELF YESTERDAY, YOUR HONOR. JUST A COPY OF WHAT IS A
24 INTERVIEW AND EXAMINATION OF HER SHOWED SO THAT OUGHT TO BE MADE
25 PART OF THE RECORD

1 **THE COURT:** IF THAT SOMETHING YOU'D LIKE FOR ME TO
2 CONSIDER, I WILL NEED IT.

3 **MR. BRIGGS:** I WILL GET IT AND I'LL MAKE IT A PART OF THE
4 RECORD, YOUR HONOR.

5 **THE COURT:** OKAY. DO YOU HAVE IT THAT I CAN CONSIDER IT
6 BEFORE ANY SENTENCING?

7 **MR. BRIGGS:** THERE'S NO NEED ME IN ARGUING ANY OTHER
8 THING. I JUST – THE ONLY THING I WOULD SAY, YOUR HONOR, AND DR. FALTAS
9 ALWAYS SAYS, WELL, YOU'RE TALKING ABOUT YOURSELF. WELL, I THINK
10 COURTS NEED TO KNOW THE HISTORY OF PEOPLE. YOUR HONOR, I HAVE NEVER
11 ARGUED WHAT I CONSIDER EXAGGERATIONS TO COURTS BECAUSE I THINK
12 EXAGGERATIONS ARE LIES. THE EXAMPLE IS – AND I'VE ASKED JUDGES THIS –
13 SOME LAWYERS WILL ARGUE SOMETHING JUST BECAUSE IT HAS A GOOD SOUND
14 TO IT, YOUR HONOR. AND I ASK JUDGES, I SAY, JUDGE, WHAT DO YOU DO WHEN
15 SOME GUY ARGUES SOMETHING LIKE THAT AND YOU KNOW HE DOESN'T EVEN
16 BELIEVE IT HIMSELF. AND SOME OF THEM WON'T ANSWER THE QUESTION BUT
17 THE JUDGES WHO ANSWER THE QUESTION SAID THEY JUST TURN THEIR CHAIR
18 AROUND AND LOOK AT THE CEILING SO THEY WON'T LAUGH AT THEM. I TELL
19 YOU IF I WAS A JUDGE I'D PROBABLY GO BACK IN THE BACK BUT I'D SAY, MR.
20 SMITH, YOU DON'T REALLY EXPECT ME TO BELIEVE THAT, DO YOU. BUT
21 ANYWAY I DON'T GET INTO THOSE KIND OF THINGS. I TRY TO REPRESENT MY
22 CLIENTS AND, OF COURSE, WE GET OUR CLIENTS AS WE GET THEM. BUT I KNOW
23 FOR A FACT IF I LIVE ANOTHER TWENTY DAYS OR SO THAT THAT PROPERTY
24 WILL GET CLEANED UP AND I HAVE FOUR – THREE VERY WARM, STRONG BODIES
25 TO HELP ME AND MY DAUGHTER IS PRETTY GOOD AT IT, TOO. SHE'S A RURAL

1 MAIL CARRIER. BUT WE CAN GET THE PROPERTY CLEANED UP SO WHATEVER
2 DIFFERENCE THAT MAKES, YOUR HONOR, THAT'S FINE.

3 THE COURT: TWO THINGS, MR. BRIGGS.

4 MR. BRIGGS: YES, SIR.

5 THE COURT: ONE, DO YOU HAVE A COPY OF THE MEDICAL NOTE
6 THAT YOU WANT MADE A PART OF THE RECORD? DOES DR. FALTAS HAVE IT?

7 MR. BRIGGS: I CAN ASK HER THAT. DO YOU HAVE A COPY? DID
8 YOU BRING THE COPY OF IT WITH YOU?

9 DEFENDANT FALTAS: NO, I THOUGHT IT WAS ONLY RELEVANT TO
10 THE CONTINUANCE WHICH WAS DENIED. I'M SORRY. BUT I PICKED IT UP
11 YESTERDAY.

12 THE COURT: IT'S NOT A PROBLEM, IT'S JUST IF YOU WANTED ME
13 TO CONSIDER IT I HAVE TO SEE IT TO CONSIDER IT.

14 DEFENDANT FALTAS: WHAT I'D LIKE CONSIDERED IS MY MOTION
15 FOR A NEW TRIAL, PLEASE.

16 MR. BRIGGS: I'M THROUGH, YOUR HONOR AGAIN, I DID TALK TO
17 HIM A COUPLE OF DAYS AGO. HE SAID HE WOULD SEND ME HIS NOTES FROM
18 THAT EXAMINATION. I DON'T KNOW WHAT HE SENT BUT IT WOULD BE
19 SUPPLEMENTAL AND BACKUP OF WHAT THE LETTER SAID, YOUR HONOR.

20 THE COURT: OKAY. SHE INDICATES --

21 MR. BRIGGS: FOR THE RECORD, I THINK IT'S MORE THAN
22 ADEQUATE BUT I'M NOT A JUDGE, YOUR HONOR, NEVER HAVE BEEN A JUDGE.

23 THE COURT: IT'S MORE THAN ADEQUATE ON WHAT ISSUE?

24 MR. BRIGGS: ON THE QUESTION OF CONTINUANCE, YOUR HONOR.

25 THE COURT: OKAY.

1 **MR. BRIGGS:** THE ONLY OTHER CAPACITY I'VE BEEN A JUDGE IS I
2 WAS AN ADMINISTRATIVE JUDGE A COUPLE OF TIMES OVER AT D.H.E.C. DOING
3 THOSE KIND OF HEARINGS BUT I CAN'T CLAIM TO BE A JUDGE. I DON'T THINK
4 THOSE GUYS ARE REALLY JUDGES. I DON'T KNOW WHAT YOU WOULD CALL
5 THEM BUT ANYWAY I THANK YOU FOR YOUR TIME, YOUR HONOR.

6 **THE COURT:** THANK YOU, SIR. SHE HAS A MOTION, SIR?

7 **MR. BRIGGS:** THAT'S FINE. I HAVE NO OBJECTION TO HER DOING
8 HER MOTION.

9 **THE COURT:** ALL RIGHT.

10 **DEFENDANT FALTAS:** SO MAY I HAND –

11 **THE COURT:** YOU MAY. YOU'VE GOT TO GET SOMEBODY TO GIVE
12 IT TO HIM FOR YOU. ALL RIGHT. PLEASE GIVE A COPY TO ME AS WELL. PLEASE
13 MARK THAT PLEASE.

14 (MOTION IS MARKED AS COURT'S EXHIBIT)

15 **DEFENDANT FALTAS:** YOUR HONOR HAD DIRECTED THAT THEY
16 GIVE US A C.D. OF THE TRIAL BY –

17 **THE COURT:** FOR PURPOSES OF CONTEMPT, LET'S STAY ON
18 TARGET AND DEAL WITH THIS MOTION TO RENEW FIRST.

19 **MR. BRIGGS:** YOUR HONOR, THE C.D.'S HAVE BEEN MADE
20 AVAILABLE. I JUST HAVEN'T GOTTEN THEM YET. THEY ARE DOWNSTAIRS
21 WHERE YOU PAY A FINE SO THEY DID MAKE THEM AVAILABLE.

22 **DEFENDANT FALTAS:** WHEN DID THEY MAKE THEM AVAILABLE?

23 **MR. BRIGGS:** THEY TOLD ME THAT ABOUT FOUR O'CLOCK
24 YESTERDAY AFTERNOON.

25 **DEFENDANT FALTAS:** YEAH, BUT YOUR HONOR'S ORDER –

1 **THE COURT:** LET'S SLOW DOWN. YOU WANT TO MAKE A MOTION
2 FOR A NEW TRIAL, DON'T YOU?

3 **DEFENDANT FALTAS:** YES, YOUR HONOR.

4 **THE COURT:** YOU HANDED US UP A MOTION FOR A NEW TRIAL,
5 CORRECT?

6 **DEFENDANT FALTAS:** YES, SIR.

7 **THE COURT:** LET'S ADDRESS MOTION FOR A NEW TRIAL. GO
8 AHEAD.

9 **DEFENDANT FALTAS:** OH, OKAY. FIRST OF ALL, OF COURSE, THIS
10 MOTION WOULD HAVE BEEN MORE DETAILED IF I HAD THE C.D. WHICH YOUR
11 HONOR HAD ORDERED BE AVAILABLE LAST WEDNESDAY. BUT FIRST THERE IS
12 THE PROBLEM OF THE JURY AND UNDER GOMEZ VS. UNITED STATES WHICH IS A
13 U.S. SUPREME COURT OPINION THERE WAS A CONVICTION. THE MAGISTRATE
14 JUDGE HAD PRESIDED OVER VOIR DIRE AND THE U.S. STATUTE SAYS NO
15 MAGISTRATE JUDGE CANNOT DO THAT EVEN THOUGH THE ARTICLE
16 (INAUDIBLE) JUDGE SAID HE'D REVIEW ALL OBJECTIONS AND ALL OF THAT. I'M
17 SAYING THAT IT IS VERY EQUIVALENT HERE. MR. -- JUDGE STEEDLEY BOGAN IS
18 RECUSED FROM MY CASES SO HE HAD NO AUTHORITY TO PRESIDE OVER VOIR
19 DIRE AND JURY QUALIFICATION. IN ADDITION, AS WAS PROVEN, HE MADE
20 COMMENTS VERY DEROGATORY TO ME AND YOU CANNOT UNRING THE BELL.
21 THAT IS SOMETHING -- YOU KNOW U.S. SUPREME COURT (INAUDIBLE) AND, OF
22 COURSE, EVEN CHIEF JUSTICE TOAL --

23 **MR. BRIGGS:** LET ME INTERRUPT. IF YOU'VE GOT ALL THAT IN
24 WRITING, DON'T (INAUDIBLE).

25 **DEFENDANT FALTAS:** IN HER ADMINSTRATIVE CAPACITY SHE

1 RECOGNIZED THAT ONLY YOUR HONOR IS THE ONE WHO IS NOT RECUSED SO
2 WHEN A JUDGE WHO IS RECUSED PRESIDES OVER VOIR DIRE AND MAKES
3 COMMENTS THAT ARE DEROGATORY TO ME WHICH ARE FALSE IN THE PRESENCE
4 OF THE VENIRE AND THEN THAT VENIRE CONVICTS ME I THINK I'M ENTITLED TO
5 A NEW TRIAL. THEN I DIDN'T WANT MR. BRIGGS TO GIVE -- SUGGEST CURATIVE
6 INSTRUCTIONS AND HE DIDN'T CONSULT WITH ME AND THE CURATIVE
7 INSTRUCTIONS THAT HE DRAFTED REALLY MADE IT WORSE. NOW THE CITY
8 ORDINANCE IS UNCONSTITUTIONAL UNDER LUCAS VS. SOUTH CAROLINA
9 COASTAL COUNCIL AND UNDER OLIVER VS. UNITED STATES. YOUR HONOR,
10 WHAT HAD HAPPENED -- ALSO CHIEF JUSTICE TOAL IN HER ADMINSTRATIVE
11 CAPACITY SAID EXTENSIONS CAN BE GRANTED TO ALLOW COUNSEL, TO ALLOW
12 DR. FALTAS' COUNSEL, TO PREPARE. MR. BRIGGS WAS SUBSTITUTED ONLY ON
13 THE EVE OF THE TRIAL BY FORMAL ORDER. IN ADDITION, MR LUPTON
14 ADMITTED THAT HE HAD NOT CONSULTED MR. BRIGGS OR ME WHEN HE WROTE
15 TO JUDGE BARBER THAT THIS WILL NOT RESULT IN DELAY.

16 YOUR HONOR HAS THE MEDICAL RECORDS SINCE MARCH 19TH. I
17 HAVE EXPERIENCED SOMETHING THAT IS FRIGHTENING AND MAY BE
18 SUGGESTIVE OF MALIGNANCY. IN ADDITION, I PROVIDED -- AND THAT IS NOT MY
19 SAY SO. I PROVIDED YOUR HONOR WITH THE PATHOLOGY REPORT WITH THE
20 ULTRASOUNDS, WITH THE CLINIC NOTES, THE E.R. NOTES, EVERYTHING IS AS I
21 HAD SAID TO YOUR HONOR. IT WAS -- SO THIS IS A CONTINUING LIFE
22 THREATENING ISSUE AND THERE WAS A DEATH IN MY FAMILY, SOMEONE VERY
23 CLOSE TO MY MOTHER IN THE MEANWHILE. SO A CONTINUANCE WOULD HAVE
24 BEEN JUSTIFIED.

25 NOW I'M SORRY TO MAKE THIS AND I DON'T THINK IT'S PROPER TO

1 MAKE IT HERE BUT I HAVE BEEN ASKING AND THIS IS AT LEAST ARGUABLE AND
 2 NEITHER MR. LUPTON NOR – AND ONE OF THE REASONS I HAD TO ASK MR.
 3 LUPTON FOR SUBSTITUTION IS THAT AFTER WE’VE BEEN BEFORE YOUR HONOR
 4 AND, OF COURSE, ALL OF THIS IS IN THE FRAMEWORK OF THAT MY RIGHT TO
 5 SELF-REPRESENTATION HAS BEEN DENIED. HAD I BEEN REPRESENTING MYSELF,
 6 NONE OF THIS WOULD HAVE HAPPENED BECAUSE ALL THE TIMES I
 7 REPRESENTED MYSELF, EXCEPT ONE TIME, I GOT EXONERATED, THANK GOD,
 8 AND THAT ONE WHICH IS STILL ON APPEAL ON FEDERAL HABEAS DID NOT
 9 CARRY JAIL TIME. SO, THIS IS SOMETHING TO KEEP IN CONSIDERATION THAT
 10 DENIAL OF THE RIGHT TO SELF-REPRESENTATION IS STRUCTURAL, MEANING IT
 11 DOESN’T MATTER IF THERE IS EVIDENCE OF GUILT OR NOT, IT’S STRUCTURAL.
 12 YOU CAN’T GET PAST IT. IT CAN NEVER BE HARMLESS. BUT ONE ARGUMENT
 13 I’VE BEEN MAKING AND NEITHER MR. BRIGGS NOR MR. LUPTON WANTED TO
 14 MAKE BECAUSE, FRANKLY, THEY DO NOT UNDERSTAND IT. I’M SORRY. IT’S NOT
 15 THAT IT’S FRIVOLOUS OR ANYTHING AND LET ME TELL YOUR HONOR AT LEAST
 16 FIVE ARGUMENTS I HAD MADE PRIOR TO THEIR BECOMING LAW. ONE IS ON
 17 FEDERAL TITLE VII. I HAD MADE AN ARGUMENT THAT IT PROHIBITS –

18 **THE COURT:** IS THE TITLE VII ARGUMENT RELEVANT TO THIS
 19 MOTION FOR A NEW TRIAL.

20 **DEFENDANT FALTAS:** NO.

21 **THE COURT:** PLEASE STICK TO THE ARGUMENTS THAT ARE
 22 RELEVANT TO THE MOTION FOR A NEW TRIAL.

23 **DEFENDANT FALTAS:** OKAY. OKAY. THE STATE – THERE ARE
 24 TWO SOVERIGNS IN THE FEDERAL SYSTEM -- THE FEDERAL GOVERNMENT AND
 25 THE STATE GOVERNMENT. IN JINKS VS. RICHLAND COUNTY, SOUTH CAROLINA

1 THE U.S. SUPREME COURT SAID A CITY OR A COUNTY IS NOT SOVERIGN. IT
2 FOLLOWS FROM THAT THAT IT CANNOT MAKE LAWS, IT CANNOT HAVE ITS OWN
3 COURTS AND I KNOW THAT'S AN ARGUMENT ALMOST ANTIEXISTENTIAL FOR
4 YOUR HONOR. YOU KNOW THAT THE CITY OF COLUMBIA COURT CANNOT BE
5 BECAUSE IT'S NOT ONLY A SOVERIGN, STATE AND FEDERAL, CAN HAVE A
6 COURT. ALSO, THE CITY OF COLUMBIA HAS NO RIGHT TO CRIMINALIZE
7 CONDUCT THAT IS NOT CRIMINAL THROUGHOUT THE STATE AND THAT IS CLEAR
8 IN BEACHFRONT ENTERTAINMENT VS. TOWN OF SULLIVAN'S ISLAND. WHETHER
9 THE STATE LAW PRE-EMPTED THE FIELD OR NOT IT'S A STRAIGHT EQUAL
10 PROTECTION ANALYSIS AND ALSO A MATTER OF THE SOUTH CAROLINA
11 CONSTITUTION. IT IS NOT A CRIME ANYWHERE ELSE IN SOUTH CAROLINA TO
12 HAVE PLASTIC OR TO HAVE RUSTED POLLS OR TO HAVE ANYTHING ONE WISHES
13 TO HAVE. SO AGAIN NONE OF THAT WAS ARGUED BEFORE BECAUSE EITHER MY
14 COUNSEL PREVIOUSLY AND THE SUBSTITUTED COUNSEL WERE UNWILLING TO
15 STUDY THE LAW OR JUST, YOU KNOW, ANYTHING I SAY. YOU KNOW. OKAY. SO
16 NOW MR. FERNANDEZ PROSECUTED THIS CASE AND UNDER STATE LAW, UNDER
17 STATE LAW, NO ONE CAN PROSECUTE A CASE IF THEY ARE ALSO PARTY OR
18 REPRESENT A SIDE IN A CIVIL LAWSUIT. THE CITY ATTORNEY - I HAVE CIVIL
19 LAWSUITS AGAINST THE CITY. THE CITY ATTORNEY REPRESENTS THE CITY IN
20 THE CIVIL LAWSUITS AND ALSO PROSECUTES THIS - PROSECUTED THIS. AND
21 THIS ONLY - THE ELECTED SOLICITOR CAN PROSECUTE AND CRIME CAN ONLY
22 BE IN THE NAME OF THE STATE. THIS IS THE CITY SO IT CANNOT EVEN
23 PROSECUTE.

24 NOW BECAUSE THE CITY APPOINTS YOUR HONOR AND RE-
25 APPOINTS AND THEY ARE AN ADVERSE PARTY, THIS DENIES ME DUE PROCESS

1 AND I HAD MADE THAT ARGUMENT BEFORE AND MARION HANNA HEARD IT AND
2 SHE SAID, NO, WE HAVE JUDICIAL INDEPENDENCE AND BLAH, BLAH, BLAH, AND
3 THEN SHE LATER HAD SOME DISCIPLINE BECAUSE OF HOW SHE TREATED ME.

4 THE COURT: NOW IS THAT RELEVANT TO THIS MOTION FOR A
5 NEW TRIAL?

6 DEFENDANT FALTAS: YES, YES, YES. BECAUSE UNDER WARD VS.
7 MONROEVILLE, TRAPERSON VS. MASSEY, GIBSON VS. BERRYHILL AND LIPTY VS.
8 UNITED STATES WHICH ARE ALL UNITED STATES SUPREME COURT CASES I
9 CANNOT BE PROSECUTED BY THE COURT OR AGENT OR APPOINTEE OF SOMEONE
10 WHO IS ADVERSE TO ME IN CIVIL LITIGATION. ALL (INAUDIBLE) ALSO
11 UNCONSTITUTIONAL AND ALSO, YOUR HONOR, THEY KEPT ON SAYING WATER
12 COLLECTS AND IT ALLOW MOSQUITOES TO BREED. YOU KNOW, THEY SAY THE
13 NATIONAL BIRD OR THE STATE BIRD OF MINNESOTA IS THE MOSQUITO.
14 MOSQUITOES BREED IN LAKES, IN STREAMS. THE FLAT SURFACE OF A MAILBOX,
15 THE FLAT TOP OF A CAR, THE LEDGE, EVEN THE TRASH CANS THAT THE CITY
16 ITSELF HAS OUT ON THE STREET COLLECT WATER. SO THAT ARGUMENT IS
17 SPECIOUS. WHAT IS SANITARY OR NOT IS DETERMINED AND ALSO PRE-EMPTED
18 BY THE STATE HEALTH DEPARTMENT AND IN THIS CASE IN THE PROFFER THEY
19 COMPLAIN TO THE STATE HEALTH DEPARTMENT AND SOMEONE, JOHN ANSEL,
20 AND THAT'S WHY I NEEDED TO SUBSTITUTE MR. LUPTON BECAUSE THIS WAS A
21 CRITICAL WITNESS. HE CAME AND SAID THERE IS NOTHING UNSANITARY. AND I
22 NEEDED - IN THE FIRST PRETRIAL YOUR HONOR SAID THAT YOU WILL ISSUE THE
23 SUBPOENA AND MR. LUPTON AGREED TO SERVE IT. THEN THE SECOND
24 PRETRIAL HE SAID, NO, I DON'T WANT TO SUBPOENA EVERYONE, AND THAT WAS
25 A KEY WITNESS. SO THAT DEPRIVED ME OF A FAIR TRIAL.

1 NOW THE JURY VENIRE, THE STATUTE REQUIRES AT LEAST FORTY
2 PEOPLE. WE DIDN'T HAVE FORTY PEOPLE. AND THE REASON IT'S NOT ONLY TO
3 ALLOW SUFFICIENT STRIKES, BUT TO HAVE A REPRESENTATION OF THE
4 COMMUNITY. AND THIS IS AGAIN A STRUCTURAL THING. YOU CAN SAY, YOU
5 KNOW, IF THERE IS OVERWHELMING EVIDENCE OF GUILT IT DOESN'T MATTER
6 THAT THE JURY WASN'T REPRESENTATIVE OR THAT THE JURY WAS AFFECTED
7 OR ANYTHING LIKE THAT.

8 AND THEN – THIS IS EXACTLY PROVEN HERE. OVER MY OBJECTION
9 I WAS TRIED FOR THINGS THAT POSTDATE THE SUMMONS. THE SUMMONS WAS
10 GIVEN TO ME AND I THINK WE'VE BEEN OVER THIS DURING THE TRIAL FOR THE
11 CARDBOARD CYLINDERS EARLY IN OCTOBER, 2011, AND WITHIN TEN DAYS
12 THEIR OWN PICTURES SHOW THAT WHEN THEY CAME BACK THOSE
13 CARDBOARDS WERE GONE. THEY NEVER, EVER GIVE ME ANOTHER SUMMONS
14 SAYING REMOVE THIS OR REMOVE THAT. IN ADDITION WHEN THEY CAME IN
15 THERE WAS A NOTICE ON ALL FOUR SIDES, NO TRESPASS, AND FLORIDA VS.
16 JARDINES – DID I FINALLY GIVE IT TO YOUR HONOR?

17 THE COURT: YOU CITED IT.

18 DEFENDANT FALTAS: WOULD YOU LIKE A COPY?

19 THE COURT: YOU CAN PROVIDE A COPY. I'LL MARK IT AND MAKE
20 IT A PART OF THE RECORD.

21 DEFENDANT FALTAS: THANK YOU.

22 THE COURT: PLEASE MARK THAT AS A COURT EXHIBIT, PLEASE.

23 (FLORIDA VS. JARDINES MARKED AS COURT'S EXHIBIT)

24 THE COURT: PLEASE CONTINUE.

25 DEFENDANT FALTAS: AND THERE WAS NO PICTURE OF ANY

1 WATER IN ANYTHING AND THERE WAS NO PICTURE – IN FACT, HE SAID THERE
2 WERE NO MOSQUITOES. BUT THE PICTURES SHOW THEM COMING BEYOND THE
3 NO TRESPASS LINE AND, YOUR HONOR, WATER COLLECTS IN POTHOLE. IN
4 FACT, THEIR OWN PICTURES SHOWED THE NEIGHBOR HAD THE GRASS VERY
5 TALL. THAT CAN ALSO BREED MOSQUITOES. IT'S NOT THE MATTER OF
6 SELECTIVE PROSECUTION, IT'S NOT CORRECT THAT IT'S NOT A DEFENSE. THERE
7 ARE FOUR U.S. SUPREME COURT CASES THAT SAY THAT PROSECUTORIAL
8 DISCRETION IS NOT UNLIMITED. THE CASES – AND I'M SORRY THEY AREN'T
9 HERE BUT THEY ARE UNITED STATES VS. ARMSTRONG. JUSTICE MARSHALL SAID
10 IT'S BEYOND DOUBT THAT PROSECUTORIAL DISCRETION IS NOT UNLIMITED.
11 BUT THE PICTURES THAT THEY BROUGHT FROM OCTOBER, THEY ARE CLOSE
12 RANGE AND FLORIDA VS. JARDINES SAYS, NO, YOU CANNOT ENTER SOMEBODY'S
13 PROPERTY TO COLLECT EVIDENCE OF A CRIME. SO THAT'S WHAT THEY DID.
14 THE OTHER THING IS THERE WAS NEVER AN INJUNCTION AND THIS COURT
15 DOESN'T HAVE CIVIL JURISDICTION. IF THERE HAD BEEN AN INJUNCTION,
16 WRITTEN INJUNCTION, SAYING WE FOUND "A," "B," AND "C" TO BE UNSANITARY
17 AND YOU ARE REQUIRED PROSPECTIVELY TO REMOVE IT WITHIN A CERTAIN
18 THEN, YES, THEY CAN BRING SOMETHING (INAUDIBLE). BUT I THINK THEY
19 WOULD ADMIT, IF THEY HAVE BEEN STALKING ME, THAT THIS GRASS IS
20 FRESHLY CUT. AND THE MOST IMPORTANT THING I'D LIKE YOUR HONOR TO
21 COMPARE IS HOW THIS LAND WAS BEFORE WE BOUGHT IT. IT WAS A JUNGLE.

22 THE COURT: I WANT TO MAKE SURE I UNDERSTAND YOU. WHO
23 DID YOU SAY STALKING?

24 DEFENDANT FALTAS: WELL –

25 THE COURT: I JUST WANT TO MAKE SURE I KNOW WHO IS

1 STALKING YOU.

2 DEFENDANT FALTAS: WELL, OBVIOUSLY AGENTS FOR THE CITY.

3 THE COURT: OKAY.

4 DEFENDANT FALTAS: I MEAN THAT HAS GONE BEYOND ANY
5 RHYME OR REASON.

6 THE COURT: OKATY.

7 DEFENDANT FALTAS: AND THE SELECTIVE PROSECUTION HERE IS
8 NOT ONLY A MATTER OF VINDICTIVENESS, BUT ALSO A MATTER OF LIKE THEY
9 HAVE BIG POTHOLES RIGHT NEXT DOOR WHICH WOULD COLLECT MORE WATER.
10 IT'S (INAUDIBLE) ON THE GENUINENESS OF THE PRETEXT THAT THIS IS WHAT
11 THEY HAVE IT FOR. AND EVEN IF YOU SEE THEIR OWN PICTURE HERE, THIS
12 CORNER WHERE THE OTHER PROPERTY HAS THE - LIKE THE TOP ONE CORNER OF
13 THE FIRST PAGE THE STONES WITH THE -

14 MR. BRIGGS: WHAT EXHIBIT NUMBER IS IT?

15 DEFENDANT FALTAS: WELL, IT'S ONLY ONE EXHIBIT SO IT'S
16 NUMBER THREE. IT SAYS DEFENDANT'S EXHIBIT NUMBER THREE BUT THIS IS
17 NOT THE DEFENDANT'S -

18 THE COURT: THEY ARE COURT EXHIBITS. THE RECORD IS CLEAR.

19 DEFENDANT FALTAS: I'M SORRY. SO THE FIRST PAGE IF YOU SEE
20 HERE THIS STONE STRUCTURE HAS NO DRAINAGE.

21 THE COURT: HAVE YOU GONE BEYOND YOUR NEW TRIAL MOTION
22 AND ARE ARGUING WHAT'S IN THE PICTURES OR IS IT STILL RELATED TO YOUR
23 NEW TRIAL MOTION?

24 DEFENDANT FALTAS: IT'S RELATED TO THE NEW TRIAL MOTION
25 THAT THAT PRETEXT THAT THINGS THAT HOLD WATER CANNOT BE, HERE IS A

1 PERMANENT STRUCTURE THAT'S TWO FEET DEEP THAT HAS NO DRAINAGE AND
2 THAT HOLDS TWO FEET OF WATER. THERE IS NO WATER IN ANY OF THOSE
3 PICTURES. WHAT THERE IS IS GRASS THAT WAS FRESHLY CUT YESTERDAY
4 WHICH SHOWS THAT I'M MAINTAINING IT ACCORDING TO THE RULES
5 ESTABLISHED.

6 **MR. BRIGGS:** GO AHEAD AND FINISH, MARIE.

7 **DEFENDANT FALTAS:** AND ON THE OTHER SIDE THERE IS ALSO IF
8 YOU SEE THE OTHER PROPERTY IT'S GOT A LOT OF CONTAINERS THAT ARE - ALL
9 RIGHT. I'VE SAID THE NEW TRIAL MOTION AND - I'M SORRY.

10 **MR. BRIGGS:** HAVE YOU GOT SOME MORE DOWN HERE OR DO YOU
11 JUST NEED TO MAKE YOUR SUMMARY?

12 **DEFENDANT FALTAS:** THAT'S - I FINISHED, YOUR HONOR. I'M
13 SORRY, I DIDN'T MEAN TO TAKE LONGER.

14 **THE COURT:** NOT A PROBLEM. THANK YOU FOR YOUR TIME.
15 OFFICER HAMPE, CAN I GET YOU TO STAND UP, SIR. WOULD YOU RAISE YOUR
16 RIGHT HAND.

17 **T. R. HAMPE, AFTER BEING DULY SWORN BY THE COURT,**
18 **TESTIFIES AS FOLLOWS:**

19 **QUESTIONS BY THE COURT:**

20 **Q.** OFFICER HAMPE, ONE ISSUE THAT HAS BEEN RAISED AND ONE THING
21 THAT HAS ASKED OF ME TO DO PREVIOUSLY WAS TO QUESTION YOU AS TO
22 WHAT YOU SAID TO JUDGE BOGAN WHEN HE SELECTED HIS JURY - WHEN JURY
23 SELECTION WAS GOING ON. CAN YOU PLEASE TELL ME WHAT YOU SAID TO
24 JUDGE BOGAN?

25 **A.** YES, SIR. I TOLD HIM, INFORMED HIM THAT, IF HE WAS UNAWARE, THAT A

1 COUPLE OF YEARS AGO THAT MS. FALTAS CAME IN AND THAT SHE KEPT THE
2 JURY PANEL LIST WITH ALL THE JURORS NAMES AND ADDRESSES ON IT AND I
3 SAID I BELIEVE SHE WAS IN CONTEMPT OF COURT AND I BELIEVE SHE WAS
4 INCARCERATED FOR THAT. I DIDN'T SAY SHE WAS, I SAID I BELIEVE SHE WAS,
5 YOUR HONOR.

6 Q. THANK YOU VERY MUCH. DID YOU SAY ANYTHING ELSE?

7 A. NO, SIR.

8 THE COURT: THANK YOU VERY MUCH.

9 DEFENDANT FALTAS: YOUR HONOR, MAY I ASK THAT THE COURT
10 ASK HIM ONE QUESTION?

11 THE COURT: YOU MAY ASK THAT I ASK HIM, I'M NOT SURE THAT I
12 WILL.

13 DEFENDANT FALTAS: OKAY. MAY I ASK IF HE CAME ON HIS OWN
14 ACCORD OR IF SOMEONE TOLD HIM TO.

15 Q. (BY THE COURT) DID ANYBODY TELL YOU TO DO THAT?

16 A. NO, SIR.

17 THE COURT: THANK YOU VERY MUCH.

18 DEFENDANT FALTAS: WELL, YOUR HONOR, OBVIOUSLY THAT
19 INFORMATION WAS FALSE BECAUSE I PROVIDED YOUR HONOR -

20 THE COURT: WE'VE BEEN THROUGH IT. I WANTED TO MAKE SURE
21 I MADE A FULL RECORD. I HAVE HEARD THE MOTION FOR A NEW TRIAL. IT IS
22 DENIED. NOW WE ARE DOWN TO THE POINT OF SENENCING. MR. FERNANDEZ, I
23 THINK I COMMENDED YOU THE LAST TIME YOU MADE A SUSPENDED SENTENCE
24 MOTION AND THAT YOU WERE TRYING TO COME UP WITH A CONCLUSION TO
25 RESOLVE THE CASE OR RESOLVE THE ISSUE AT THE PROPERTY AS OPPOSED TO -

1 I THINK YOU EVEN AT THAT TIME SAID I'M NOT TRYING TO PUT HER IN JAIL. MR.
2 BRIGGS, I COMMEND YOU BECAUSE YOU HAVE SENT E-MAILS AND SOLICITED
3 PEOPLE TO COME UP WITH A SOLUTION ON CORRECTING THE PROBLEM AND
4 GETTING A SHED AND GETTING THE STUFF IN THERE. I'M NOT HERE TO
5 SENTENCE MR. FERNANDEZ OR MR. BRIGGS. I'M HERE ABOUT DR. FALTAS. AND
6 ALL THAT I HEAR FROM DR. FALTAS IS WE DON'T HAVE THE AUTHORITY TO BE
7 HERE, IT'S UNCONSTITUTIONAL, THE STUFF IS NOT WHAT THEY SAY IT IS TO BE
8 AND IF YOU ARE GOING TO TELL ME TO DO SOMETHING THEN I NEED EVEN
9 GREATER SPECIFICITY ON WHAT THAT MEANS. SAYING GRASS AND DIRT IS NOT
10 ENOUGH, I NEED TO KNOW EXACTLY WHAT THEY WANT ME TO DO. FOR THE
11 REASONS OF MY CONCERN ABOUT MY ABILITY TO PROPERLY DRAFT A
12 SUSPENDED SENTENCE THAT WOULD BE CLEAR ENOUGH SO THAT WE
13 WOULDN'T HAVE MISUNDERSTANDINGS AND ALLEGED AMBIGUITIES, THE
14 COURT IS NOT GOING TO DO A SUSPENDED SENTENCE. THE COURT IS GOING TO
15 DO THE FOLLOWING. I AM GOING TO IMPOSE A SENTENCE OF THIRTY DAYS. I
16 AM GOING TO GIVE THE DEFENDANT THE OPPORTUNITY AT THE CONCLUSION OF
17 WHAT ELSE TAKES PLACE HERE TO FILE A NOTICE OF APPEAL AND I WILL
18 IMMEDIATELY HAVE A HEARING ON AN APPELLATE BOND SO THAT ALL THAT
19 CAN BE ADDRESSED BEFORE WE LEAVE TODAY AND ASSUME BOND POSTED DR.
20 FALTAS DOES NOT HAVE TO START ANY OF HER SENTENCE UNTIL THE APPEAL IS
21 CONCLUDED. AND IF SHE'S RIGHT ON ONE OR MORE OF THE ISSUES THAT SHE'S
22 RAISED THEN THAT WILL TAKE CARE OF ITSELF AT THAT TIME.

23 DEFENDANT FALTAS: THANK YOU.

24 THE COURT: SECOND ISSUE IS THAT OF THE CONTEMPT. HAVE
25 Y'ALL EVEN GOTTEN THE C.D. YET?

1 **MR. BRIGGS:** YOUR HONOR, I WAS CALLED YESTREDAY
2 AFTERNOON AND TOLD THAT IT WAS HERE BY MS. HAWKINS AND SHE SAID SHE
3 WOULD LEAVE IT DOWNSTAIRS WHERE YOU PAY FINES. I JUST DIDN'T HAVE A
4 CHANCE TO GO BY THERE.

5 **THE COURT:** FOR THE SAKE OF NOT COMING BACK SOLELY, I AM
6 GOING TO RELIEVE THE CONTEMPT FINDING AND JUST END THAT ISSUE. I AM
7 NOT GOING TO GET INTO WHETHER YOU SHOULD HAVE HAD THE C.D. BY NOW.
8 WE ARE JUST GOING TO PULL IT AND THAT WILL KEEP US FROM HAVING TO GET
9 YOU THE C.D. AND THEN COME BACK AND ARGUE IT.

10 NOW LET'S MOVE TO -- TO THE EXTENT NECESSARY BECAUSE IT
11 WAS A MOTION MADE PREVIOUSLY AT SOME OTHER POINT IN THESE
12 PROCEEDINGS, I DON'T FIND ANYTHING TO BE ETHICALLY A VIOLATION THAT
13 REQUIRES ANY REPORTING BY THE COURT.

14 NOW LET'S MOVE TO THE SIMPLE ASSAULT. MR. FERNANDEZ, MR.
15 LUPTON, WHOEVER NEEDS TO GO FIRST.

16 **MR. FERNANDEZ:** YES, YOUR HONOR, I THINK IT'S APPROPRIATE
17 FOR THE COURT TO HEAR FROM THE VICTIM. I'LL LET HER ADDRESS THE COURT
18 AND, AS I SAID BEFORE, I AM PERFECTLY HAPPY WITH THE COURT'S BEST
19 DISCRETION FOR SENTENCING.

20 **THE COURT:** YES, MA'AM, MS. STEELE.

21 **MS. STEELE:** AS I'VE TESTIFIED I'VE BEEN HARRASSED,
22 ASSAULTED AND THIS HAS BEEN GOING ON FOR BASICALLY YEARS BECAUSE
23 THE TRIAL KEPT BEING DELAYED. I NEED IT TO STOP AND WHEN I CAME HERE
24 TODAY KNOWING THAT THIS WAS THE 24TH -- 25TH THAT THIS WAS GOING TO BE
25 THE END OF IT. HOWEVER IT PLAYED OUT, THIS WAS GOING TO BE THE END, I

1 DIDN'T HAVE TO DEAL WITH THIS ANYMORE. I DON'T FEEL LIKE THAT. I DON'T
2 FEEL LIKE THIS IS EVER GOING TO STOP NOW. WHAT SHE'S BEEN SAYING IN
3 COURT AND I'M NOT AN ATTORNEY, I'M NOT A JUDGE, BUT WHAT I HEARD HER
4 SAY WAS IF I FILE A LAWSUIT AGAINST THE CITY OR THE STATE THEN THEY
5 CAN'T CHARGE ME WITH ANYTHING, THAT I'M ABOVE THE LAW. THAT'S WHAT I
6 HEARD. AND WE ARE A NATION OF LAWS AND THE LAWS DO APPLY TO HER BUT
7 SHE SOMEHOW DOES NOT FEEL THAT WAY. I JUST WANT TO BE LEFT ALONE.
8 AND JUST AS SHE SAID, WHEN I WAS IN COURT YESTERDAY WHERE I WAS
9 SUPPOSED TO BE AND SHE WAS NOT HERE AND AFTER COURT I WENT TO MOW
10 MY GRASS AND SHE BRINGS THAT UP LIKE SOMETHING HAPPENED OVER THERE.
11 ALL I HAVE TO DO IS SHOW UP ON MY PROPERTY AND THERE'S SOME WILD
12 CONSPIRACY GOING ON. IT NEEDS TO STOP. I WANT SOME RELIEF. THANK YOU.

13 THE COURT: THANK YOU, MA'AM. MR. LUPTON.

14 DEFENDANT FALTAS: YOUR HONOR, MAY I SPEAK FOR MYSELF
15 ON THAT?

16 MR. BRIGGS: YOU WAIT.

17 THE COURT: I'M GOING TO LET YOU SPEAK FOR YOURSELF. YOU
18 HAVE GOT TO DECIDE WHETHER THAT'S IN YOUR BEST INTEREST OR NOT BUT
19 I'LL LET YOU DO IT. MR. LUPTON.

20 MR. LUPTON: YOUR HONOR, FIRST OF ALL, I DON'T THINK IT WAS
21 EXPLICITLY STATED BUT JUST FOR THE SAKE OF PRESERVING THE RECORD
22 WE'LL ASK THAT THE - HER LEGAL ARGUMENTS CONCERNING JURISDICTION OF
23 THE COURT AND ALL THAT BE PRESERVED AS PART OF THE RECORD IN THIS
24 CASE.

25 THE COURT: SO PRESERVED FOR THE SIMPLE ASSAULT CASE AS

1 WELL AND SO DENIED. CONSISTENT WITH THE LAST RULING.

2 **MR. LUPTON:** THANK YOU, YOUR HONOR. WITH REGARDS TO
3 SENTENCING, YOUR HONOR, IN LISTENING TO THE TRIAL, LISTENING TO
4 EVERYTHING THAT HAS OCCURRED IN THIS CASE AND THE VARIOUS OTHER
5 CASES, INCLUDING MS. STEELE'S COMMENTS TO THE COURT, WHAT I SEE IS THE
6 UNWANTED TOUCHING IN THIS SITUATION THAT LED TO THE CONFICTION
7 PRODUCED NO PHYSICAL INJURY. I UNDERSTAND HER ANXIETY, THE
8 BREAKDOWN SHE DESCRIBED TO THE COURT THAT OCCURRED LATER, HER
9 FRUSTATION, ALL OF THAT STUFF, BUT I WOULD NOTE FOR THE COURT THAT
10 EVEN WHAT SHE SAID TODAY RELATES NOT TO THE SPECIFIC INSTANCE OF THE
11 ASSAULT BUT TO HER FRUSTRATION OVER EVERYTHING. THE INJURY FOR THE
12 TOUCHING PRODUCED NO PHYSICAL INJURY. THE EMOTIONAL SCARS THAT
13 SHE'S DESCRIBED ARE FROM CHARGES THAT HAVE BEEN TO COURT, SHE'S BEEN
14 NOT CONVICTED FOR VARIOUS REASONS. IT'S MATTERS OUTSIDE THIS SPECIFIC
15 CASE AND I'D ASK THE COURT NOT TO IMPOSE A THIRTY-DAY ACTIVE JAIL
16 SENTENCE BASED UPON CIRCUMSTANCES THAT WERE NOT DIRECTLY RELATED
17 TO THE ASSAULT OR THE SEVERITY OF THE ASSAULT. THE ASSAULT WAS THE
18 SERVING A PAPER. HAVING SAID THAT, I AM ALSO SYMPATHETIC WITH HER
19 DESIRE TO HAVE NO FURTHER CONTACT. I WOULD ASK THE COURT TO
20 CONSIDER THAT WHATEVER SENTENCE THE COURT IMPOSES THAT THE COURT
21 SUSPEND THAT SENTENCE UPON NO CONTACT, DIRECT OR INDIRECT, WITH THE
22 VICTIM OR HER HUSBAND, INCLUDING GOING UPON THE PROPERTY, EITHER ■■■
23 OR ■■■ BYRON STREET HERE IN COLUMBIA. I BELIEVE THAT THAT IS - THE
24 COURT CAN GIVE NOT COMING WITHIN A HUNDRED FEET OF THEM, HOWEVER
25 THE COURT DEEMS APPROPRIATE, BUT I THIHNK THAT THAT WOULD GIVE THE

1 OPPORTUNITY FOR SOME – WHAT SHE’S ASKED FOR, THE NOT BEING BOTHERED.
2 PUTTING DR. FALTAS ---

3 DEFENDANT FALTAS: ENOUGH.

4 MR. BRIGGS: WAIT A MINUTE. HE’S GOING TO GIVE YOU CHANCE.

5 DEFENDANT FALTAS: MR. LUPTON, THIS IS NOT SERVING MY
6 INTERESTS AT ALL. OKAY?

7 THE COURT: THANK YOU, MR. LUPTON.

8 DEFENDANT FALTAS: ALL RIGHT.

9 THE COURT: DO YOU HAVE ANY FURTHER ARGUMENT.

10 MR. LUPTON: YOUR HONOR, I WOULD SAY THAT PUTTING HER IN
11 JAIL IS GOING TO GIVE AT MOST TWENTY-ONE DAYS OF RELIEF IF IT WORKS.
12 HAVING THAT SENTENCE SUSPENDED WILL GIVE HER A GREATER PERIOD OF
13 RELIEF AND IF IT DOESN’T WORK THEN THE SENTENCE CAN BE IMPOSED.

14 THE COURT: THANK YOU, MR. LUPTON.

15 MR. LUPTON: THANK YOU, YOUR HONOR.

16 THE COURT: YES, MA’AM.

17 DEFENDANT FALTAS: YOUR HONOR, I’M SORRY. MR. LUPTON HAD
18 SPECIFICALLY TOLD ME THAT BECAUSE HE’S FORMER FRIENDS OF THE
19 SOLICITOR’S OFFICE PROSECUTED ME AND, FIRST OF ALL, JUST –

20 MR. BRIGGS: DO WHAT YOU NEED TO.

21 DEFENDANT FALTAS: DON’T TOUCH ME.

22 MR. BRIGGS: DO WHAT YOU NEED TO. DO WHAT YOU NEED TO
23 AND DON’T GO OFF THE SUBJECT.

24 DEFENDANT FALTAS: DON’T TOUCH ME, OKAY? WHEN HE SAYS
25 NOT WITHIN A HUNDRED FEET FROM HER, THAT’S MY LAND. MY LAND WHICH

1 THEY WANT ME TO MOVE THINGS FROM WHICH I WAS YESTERDAY THERE
2 CUTTING THE GRASS, IT'S TWO FEET FROM HER PROPERTY. HUNDRED FEET
3 WOULD GET SOMEBODY ELSE'S LAND. THERE HAS NEVER BEEN ANY
4 ALLEGATION OF ANY OTHER ASSAULT IN THE FOUR YEARS. THERE HAVE BEEN
5 TWO TRESPASS CHARGES OF WHICH I WAS ACQUITTED. THERE HAS BEEN ONE
6 DISORDERLY CONDUCT OF WHICH I WAS ACQUITTED. WHAT'S MOST
7 IMPORTANT ALL THESE HARRASSMENT LIES I WAS ARRESTED ON DECEMBER 2ND,
8 2009. THERE WAS A FIVE DAY JURY TRIAL BEFORE THE HONORABLE CLIFTON
9 NEWMAN. ALL THESE LIES WERE SAID. I WAS NOT GIVEN DISCOVERY. IN FACT,
10 SHE SAT HERE AND SAID SHE'S STILL TAKING MEDICATION. WHEN I WANTED TO
11 - AND I TESTIFIED TO THAT. WHAT YOUR HONOR NEEDS TO KNOW IS THAT ALL
12 THIS HARRASSMENT HAS BEEN BROUGHT. I WAS ARRESTED. I SERVED THREE
13 DAYS. I WAS MADE TO BE MENTALLY EXAMINED. THERE WAS A TRIAL WHERE
14 THE ENTIRE MIGHT OF THE STATE HAD ALL THE TIME TO GIVE ITS EVIDENCE.
15 THEY LISTED THIRTY-SIX WITNESSES AND THE JURY DIDN'T BELIEVE ANY OF IT.
16 SO THEY CANNOT - IT'S NOW DISMISSED WITH PREJUDICE. THEY CANNOT COME
17 BACK JUST BECAUSE MR. LUPTON DOESN'T LIKE ME AND HE KEEPS ON SAYING I
18 SYMPATHIZE WITH HER. HE SHOULDN'T BE SYMPATHIZING WITH HER. HE
19 SHOULD BE SYMPATHIZING WITH ME AND THAT'S WHY I'VE BEEN SAYING FROM
20 THE BEGINNING I DON'T WANT HIM. AND ONCE AGAIN THIS IS MY (INAUDIBLE)
21 BUT WHAT WAS I CONVICTED OF? WAS I CONVICTED OF HARRASSMENT? NO, I
22 WAS ACQUITTED OF HARRASSMENT. SHE SAYS SHE WANTS THIS TO STOP.
23 WHAT DOES SHE WANT TO STOP? HERE IS MR. FERNANDEZ SAYING I HAVE TO
24 GO TO MY LAND EVERY DAY AND MAKE SURE THERE IS NO WATER. AND THEN
25 MR. LUPTON SAYS SHE HAS TO BE A HUNDRED FEET FROM HER. WELL, AS I SAID

1 MY LAND IS TWO FEET FROM HER AND THAT'S THE ISSUE IS ALL OF THIS.

2 WHAT YOU NEED TO LOOK AT, I NEVER HAD AN ASSAULT

3 CONVICTION BEFORE. THERE WAS NEVER AN ASSAULT CONVICTION AFTER

4 THAT AND THIS HARRASSMENT THAT KEEPS ON BEING BROUGHT IS RES

5 JUDICATA AND ONE THING THAT MR. LUPTON IS VERY INEFFECTIVE AND I

6 WOULD LIKE IF YOUR HONOR TO ORDER THAT. IN THE TWO BANKER'S BOXES I

7 BEGGED HIM BECAUSE I SAW THEM. THERE IS THIS SHEET WHERE SHE SIGNED

8 THE VICTIM'S IN DECEMBER, 2009, AFTER I WAS ARRESTED AND IT SAID DO YOU

9 HAVE PSYCHOLOGICAL PROBLEMS. SHE SAID NO. DO YOU NEED MEDICAL

10 ATTENTION? SHE SAID NO. SHE SAID I'M STILL TAKING MEDICATION. I ASKED

11 MR. LUPTON ASK HER WHAT MEDICATION, WHO PRESCRIBED IT. THE OTHER

12 DAY IN THE FIRST TRIAL SHE SAID, NO, SHE'S NOT BIASED AGAINST ME BECAUSE

13 I'M AN IMMIGRANT AND SHE CLAIMS SHE'S AN IMMIGRANT. I BEGGED MR.

14 LUPTON TO GET THE CITY TO SUBPOENA HER. THESE ARE OBJECTIVE THINGS.

15 THESE ARE LIES. BUT EVEN AS (INAUDIBLE) IT'S YOUR CHOICE TO BELIEVE

16 THEM. ALL I HAVE BEEN CONVICTED OF IS A SIMPLE ASSAULT THAT I NEVER

17 HAD HAPPEN BEFORE. THEY DO NOT ALLEGE ANY ASSAULT AFTER THAT. IN

18 FACT, I AM THE ONE WHO IS ALLEGING THEY CAME AND ASSAULTED ME. SO IN

19 THE FOUR YEARS YOU NEED TO TAKE INTO ACCOUNT THAT THIS IS A FIRST

20 OFFENSE, NEVER REPEATED. THE HARRASSMENT HAS BEEN TRIED AND I AM

21 ACQUITTED OF IT. THEY CANNOT JUST KEEP ON BRINGING ON ME MORE

22 RESTRICTIONS TO MY LIBERTY, MORE DAMAGES, BECAUSE AFTER THEY HAVE

23 LOST IN COURT THEY JUST GET HERE TO SEE IT AND WHAT IS SUPPOSED TO BE

24 MY LAWYER LETS THEM. NOT ONLY LETS THEM, HE STANDS HERE AND SAYS

25 I'M SYMPATHETIC TO HER. THIS IS NOT ONLY INEFFECTIVE ASSISTANCE, THIS IS

1 COUNSEL WORKING AGAINST ME. AND I SPECIFICALLY WANT AND I WANT TO
2 ASK HIM TO PLEASE LOOK AT THAT PAPER BECAUSE IT'S IN THIS COURT'S
3 RECORDS AND SHE LIED TO YOUR HONOR BECAUSE SHE SIGNED THAT VICTIM
4 STATEMENT WITH THE SOLICITOR'S OFFICE AND THEN THEY REMANDED IT
5 HERE AND IT'S IN THERE. DID YOU SUFFER PSYCHOLOGICAL EFFECTS? NO. SO
6 THIS IS FRAUD UPON THE COURT. BUT IF YOUR HONOR MAKE IT SO BASIC, SO
7 BASIC, IT'S A SIMPLE ASSAULT. I HAVE NO RECORD OF ASSAULT, NO RECORD OF
8 ANY CRIME FOR THAT MATTER. THERE IS NO ALLEGATION THAT IT EVER
9 HAPPENED AGAIN. SHE SAYS SHE WANTS TO BE LEFT ALONE. WELL, THERE IS
10 NO ALLEGATION THAT I DID ANYTHING TO HER AFTER THAT DATE. OTHER
11 ALLEGATIONS BEFORE AND AFTER THAT DATE HAVE BEEN TRIED AND I'VE
12 BEEN ACQUITTED OF THEM. SO SHE CANNOT WIN FOR LOSING JUST BECAUSE
13 MY COUNSEL HATES ME.

14 THE COURT: MR. FERNANDEZ.

15 MR. FERNANDEZ: YOUR HONOR, I FEEL COMPELLED (INAUDIBLE) I
16 HAVEN'T HEARD AND I'M GOING TO GIVE MR. LUPTON AN OPPORTUNITY TO
17 SPEAK TO THE COURT, TOO, BECAUSE I KNOW HE'S LIKE TO. THE DEFENDANT'S
18 UNAPOLOGETIC. SHE'S DEFIANT. I HEARD THAT AND I'M CONVINCED THAT THE
19 PROBLEMS AREN'T GOING TO GO AWAY FOR MS. STEELE. SHE'S VERY
20 CONSUMED WITH THE LIVES OF OTHERS AS YOUR HONOR CAN LIKELY TELL. MY
21 RECOMMENDATION IS - I'M FINE WITH WHAT THE COURT DOES - BUT, YOU
22 KNOW, IT'S TROUBLING. THE BEHAVIOR IS TROUBLING AND I DON'T KNOW
23 WHAT THE ANSWER IS QUITE FRANKLY, YOUR HONOR, AND I DON'T KNOW
24 WHAT AN APPROPRIATE MESSAGE IS. I CAN CERTAINLY SAY, NOT THAT THIS IS
25 RELEVANT TO THE SENTENCING, BUT HER COUNSEL I THINK HAS BEEN

1 EXTRAORDINARILY EFFECTIVE QUITE FRANKLY. AND I COMMEND HIM ON HIS
2 REPRESENTATION, THAT IS MR. LUPTON, BUT I KNOW HE WANTS TO MAYBE
3 CLARIFY SOME THINGS. BUT I'M TROUBLED BY HER SPEECH HERE. SHE SEEMS
4 TO HAVE - DOESN'T REALLY GRASP WHAT THIS IS ALL ABOUT AND DOESN'T
5 SEEM TO HAVE TAKEN ANY KIND OF RESPONSIBILITY HERE.

6 THE COURT: YES, SIR.

7 MR. LUPTON: YOUR HONOR, I FEEL COMPELLED TO ADDRESS
8 SOME OF THE ISSUES FOR THE RECORD. I'D LIKE TO NOTE THAT THE QUESTIONS
9 ABOUT DOCUMENTS THAT ARE IN A BANKER'S BOX. I DO NOT BELIEVE - I DID
10 NOT ASK FOR ANY OF THAT TO BE RETRIEVED AND BROUGHT DOWN. I DO NOT
11 BELIEVE IT'S RELEVANT. THE VICTIM ON THE STAND ADMITTED UNDER CROSS
12 EXAMINATION, I IMPEACHED HER WITH THE FACT HER TESTIMONY ABOUT THE
13 STILL ON MEDICATION FROM THIS, THAT SHE HAD NOT GONE UNTIL AT LEAST
14 JANUARY OF 2010. SO A DECEMBER, 2009, FORM WOULD NOT BE RELEVANT. SHE
15 ADMITTED UNDER OATH THAT AT THAT POINT SHE HAD NOT SOUGHT ANY
16 TREATMENT. I DID NOT DO THAT. I DID NOT SEE ANY RELEVANCE TO IT. I
17 STAND BY THAT. THE COURT WAS AWARE OF THAT INFORMATION.

18 WITH REGARDS TO THE ACCUSATIONS THAT ANY PERSONAL
19 FEELINGS I HAVE TOWARDS DR. FALTAS HAVE CAUSED ME TO ACT AGAINST HER
20 MAKING ME INEFFECTIVE BECAUSE I WAS ACTING AGAINST HER BEST
21 INTERESTS TRYING TO GET HER CONVICTED, THOSE ARE ALLEGATIONS THAT
22 SHE'S RAISED IN MULTIPLE E-MAILS THAT I'VE BEEN ORDERED BY VARIOUS
23 JUDGES TO SEE HER CONVICTED AND BRING UP AND RE-HASH AND REOPEN THE
24 HARRASSMENT ALLEGATIONS. I WOULD CATEGORICALLY DENY ANY OF THAT.
25 I WAS NOT TOLD BY ANYONE TO COME IN HERE AND TRY AND SABOTAGE HER

1 CASES. HAD I BEEN TOLD BY ANYONE, ANY JUDICIAL AUTHORITY TO DO THAT
2 AS AN OFFICER OF THE COURT I WOULD HAVE BEEN COMPELLED TO REPORT
3 THAT AND I WOULD HAVE CERTIANLY NOT DONE SO. I HAVE AT ALL TIMES
4 REGARDLESS OF ANY FEELINGS I HAVE ABOUT DR. FALTAS, OR ANY OTHER
5 CLIENT, I HAVE DONE MY DUTY AS AN ATTORNEY DILIGENTLY AND TO THE
6 BEST OF MY ABILITY. I HAVE IN THIS CASE – AT THIS STAGE I DON'T FEEL LIKE I
7 CAN GO INTO ANYTHING EVEN THOUGH A LOT OF THIS HAS BEEN BROADCAST
8 BY DR. FALTAS THROUGH VARIOUS PARTIES BY E-MAIL BUT I WILL JUST SAY
9 THAT I HAVE DONE MY BEST. AND I WOULD SAY THAT IS REFLECTED BY THE
10 FACT THAT OUT OF THE FOUR CHARGES THAT I TOOK TO TRIAL FOR HER, I GOT
11 SUCCESSFUL CONCLUSIONS ON THREE OF THEM. AND AS FAR AS THE
12 HARRASSMENT INFORMATION I HAD GOTTEN THAT EXCLUDED FROM THE TRIAL
13 IN THIS CASE. THAT INFORMATION WAS –

14 **DEFENDANT FALTAS:** SO WHY DOES IT COME IN IN SENTENCING?
15 THAT'S A MATTER OF PUBLIC RECORD. THE HARRASSMENT WAS RESOLVED IN
16 MY FAVOR.

17 **THE COURT:** THANK YOU, MR. LUPTON.

18 **MR. LUPTON:** YOUR HONOR, I WOULD LIKE TO CONCLUDE BY
19 SAYING THAT IT WAS THE DEFENDANT'S DECISION TO GO INTO ALL THOSE
20 PRIOR ALLEGATIONS. IN FACT, SHE WAIVED JURY TRIAL BECAUSE, AS SHE PUT
21 ON THE RECORD SO I DON'T FEEL THIS IS A VIOLATION OF ATTORNEY-CLIENT
22 PRIVILEGE, SHE EXPLAINED THAT SHE WANTED TO GO INTO ALL THAT AND
23 BECAUSE A JURY TRIAL WOULD HAVE BARRED THAT THAT SHE VOLUNTARILY
24 WAIVED THAT RIGHT TO VOLUNTARILY GO INTO ALL HARRASSMENT
25 ALLEGATIONS. SO TO SAY THAT I'M –

1 DEFENDANT FALTAS: NO, MR. LUPTON, THAT'S NOT WHAT
2 HAPPENED.

3 THE COURT: WE ARE GOING TO END THIS RIGHT NOW. THANK
4 YOU, MR. LUPTON. DR. FALTAS, I WAS ONCE TOLD WHEN I WAS A YOUNG MAN
5 THE PROOF IS IN THE PUDDIN'. I DON'T KNOW SAID WHAT TO MR. LUPTON AND
6 WHEN. I KNOW THAT HE HAS REPRESENTED YOU ZEALOUSLY AND ON
7 YESTERDAY WHEN YOU DIDN'T SHOW HE WENT OUT OF HIS WAY TO TRY TO
8 FIND REASONS THAT YOU WEREN'T HERE, INCLUDING CALLING HOSPITALS, ET
9 CETERA, UNTIL HE LOCATED WHERE YOU WERE BECAUSE HE DID NOT WANT
10 THE COURT TO TAKE ANY ACTION AGAINST YOU FOR NOT BEING HERE. HE THEN
11 REPRESENTED YOU WELL. EVEN HAVING CHARGES READ TO THE JURY NOT TO
12 HOLD THINGS AGAINST YOU - I MEAN. I APOLOGIZE. ON THE DISORDERLY I
13 TRIED THAT. EVEN --- WE READ IT BUT THEN I ENDED UP ADDRESSING IT. I'M
14 SORRY. WE DID THE FIRST CASE BENCH TRIAL. HE MADE ARGUMENT FOR THERE
15 BE A CHARGE TO GO TO THE JURY ON THE SECOND ONE BUT THEN HE MADE A
16 MOTION AND GOT THE CHARGE KICKED OUT SO THE SECOND JURY NEVER EVEN
17 GOT TO SEE THE CHARGE. SO IF HE'S AGAINST YOU, HE'S HIDING IT PRETTY
18 GOOD SO I'M JUST GOING TO LEAVE IT AT THAT. THAT'S WHAT I OBSERVED. I
19 DON'T KNOW WHAT YOU KNOW, I DON'T KNOW WHAT HE KNOWS. I DO KNOW
20 THAT HE'S BEEN EFFECTIVE AND I DO KNOW THAT HE PERSUADED ME THAT
21 YOU WERE NOT GUILTY OF DISORDERLY CONDUCT ON LEGAL GROUNDS AND I
22 AGREED WITH IT AND FOUND YOU NOT GUILTY AND HE GOT THE OTHER CHARGE
23 DISMISSED BECAUSE OF LACK OF ISSUE ON THE INDICTMENT, THINGS HE DID
24 NOT HAVE TO RAISE AND YOU WOULD HAVE NOT EVEN SEEN IT IF HE HADN'T
25 BECAUSE YOU WEREN'T HERE. BUT THAT'S THAT. MR. BRIGGS, DID YOU HAVE

1 SOMETHING YOU'D LIKE TO SAY BEFORE YOU START?

2 MR. BRIGGS: LET ME ASK HER A QUESTION AND THEN I'LL DO IT.

3 (PAUSE)

4 MR. BRIGGS: YOUR HONOR, IF I COULD JUST THREE SENTENCES AS
5 A FRIEND OF THE COURT. YOUR HONOR, THIS WHOLE THING, ALL OF THIS
6 DISCUSSION BETWEEN DR. FALTAS AND THE CITY STARTED WITH THE
7 ALLEGATIONS OF MASON AND HIS WIFE ABOUT THE HARRASSMENT. AND I
8 LOOKED AT ALL THE PICTURES, I HEARD ALL THE TAPE RECORDINGS ALTHOUGH
9 I DID NOT REPRESENT HER IN THERE AND, YOUR HONOR, IF THE PAPARAZZI CAN
10 DO WHAT THEY CAN DO, SHE CAN DEFEND HERSELF FROM SOMEBODY WHO IS
11 HARRASSING HER. TO ME THOSE TWO HARRASSMENT CHARGES WERE THE
12 MOST HENIOUS THING I'VE EVER SEEN IN FORTY-THREE YEARS OF LAW
13 PRACTICE. EVENTUALLY THEY WERE DISMISSED.

14 DEFENDANT FALTAS: THEY WERE RESOLVED IN MY FAVOR.

15 MR. BRIGGS: SHE WON ONE OF THEM IN CIRCUIT COURT AND
16 THEN THEY WERE DISMISSED, YOUR HONOR. IT CONTINUES. IT CONTINUES,
17 THIS ANAMOSITY HERE. AND I DON'T KNOW WHY (INAUDIBLE) --

18 DEFENDANT FALTAS: IT DOESN'T CONTINUE. I HAVEN'T DONE
19 ANYTHING TO THEM. I HAVEN'T DONE --

20 MR. BRIGGS: SHUT UP. YOUR HONOR, I WOULD ASK THIS. THE
21 COURT ASKED MR. HERNANDEZ WHEN AT ANY TIME DURING THIS TIME DID DR.
22 FALTAS DO ANYTHING EXCEPT DEFEND HERSELF WHEN OTHER PEOPLE TRIED
23 TO HARRASS HER?

24 THE COURT: MR. FERNANDEZ IS NOT A WITNESS AND I'M NOT
25 GOING TO ASK IT. AND HIS NAME IS FERNANDEZ WITH AN "F." ALL RIGHT. I'M

1 NOT AWARE OF THE ALLEGATIONS OF THE HARRASSMENT CHARGE. I WASN'T
2 INVOLVED IN THEM, I HAVEN'T SEEN THOSE PICTURES OR VIDEOES OR
3 ANYTHING INVOLVING THAT CASE. I WASN'T THERE.

4 MR. BRIGGS: BUT YOU CAN ADMIT THEY WERE DISMISSED, YOUR
5 HONOR.

6 THE COURT: SHE'S TOLD ME AND I ACCEPT IT. I'M ACTUALLY A
7 LITTLE MORE CONCERNED ABOUT WHETHER OR NOT SHE ACCEPTS ANY
8 RESPONSIBILITY IN SOME OF HER TESTIMONY DURING THE TRIAL, INCLUDING
9 AND GOING AS FAR AS TO SAY AND PROVIDING THE PICTURES OF THE SIDE OF
10 THE HOME AND INDICATING THAT ANY OF THE WITNESSES INTERVIEWED BY
11 THE POLICE EITHER WERE NOT WITNESSES AND WERE FLAT LYING OR
12 ACTUALLY BEING COERCED BY THE POLICE AS TO MAKE UP LIES TO GET A
13 WARRANT TAKEN OUT AGAINST HER WHICH I FIND TO KIND OF BE JUST NOT - IT
14 JUST DOESN'T SIT RIGHT BECAUSE THE COPS DIDN'T THEN WRITE A TICKET.
15 AND IF THEY SAT OUT THERE FOR THREE HOURS TO TALK PEOPLE INTO A STORY
16 SO THAT THEY COULD HAVE A RIGHT TO PROSECUTE HER, THEY WOULD HAVE
17 WRITTEN A TICKET. YOU KNOW, THE LADY SAYS CLEARLY WHERE SHE WAS
18 SITTING AND WHAT SHE SAW. HER TESTIMONY IS ACTUALLY LESS THAN THE
19 ALLEGED VICTIM WHICH IS COMMON WHEN YOU HAVE TWO PROPLE FROM
20 DIFFERENT PROSPECTIVES AND THEN DR. FALTAS SAYS EVERYBODY IS LYING,
21 THEY WENT AROUND TO THE BACK OF THE HOUSE. THAT'S ENOUGH.

22 THE ANSWER IS BASED ON ALL THAT I HAVE HEARD AND BASED
23 ON ALL THAT HAS BEEN ARGUED IN TERMS OF THE SENTENCING I AM INCLINED
24 NOT TO FOLLOW THE RECOMMENDATION OF MR. LUPTON. I AM NOT GOING TO
25 PUT A HUNDRED FOOT RESTRICTION ON YOU, I'M NOT GOING TO PUT ANY

1 RESTRICTIONS ON YOU. I'VE SAID IT SEVERAL TIMES. I AM NOT CONVINCED
2 THAT IF I DID ANY SUSPENDED SENTENCES THAT I WOULD DO ANYTHING OTHER
3 THAN CREATE MORE ISSUES THAN WE SOLVED. ACCORDINGLY THERE WILL BE
4 NO SUSPENDED SENTENCE. THE SENTENCE OF THE COURT WILL BE TWENTY
5 DAYS CONSECUTIVE TO THE THIRTY DAYS PREVIOUSLY ORDERED. NOW WE'VE
6 GOT ISSUES REGARDING APPEAL. I PREVIOUSLY ADVISED YOU THAT I WILL
7 ALLOW YOU TO APPLY FOR AN APPEAL BOND. I WILL ALLOW BOTH OF YOU TO
8 ARGUE APPEAL BOND AND I WILL RULE ON IT. IF YOU HAVE A NOTICE OF
9 APPEAL, WE'LL GET IT FILED. IF YOU DO NOT, I WILL GIVE YOU UNTIL FIVE
10 O'CLOCK TOMORROW TO GET IT FILED. I THINK, MR. BRIGGS, YOU ALREADY
11 HAD YOURS. MR. LUPTON BEGON ON ONE BUT BECAUSE HIS TRIAL WAS TODAY
12 HE NEEDS TO PUT THE BASIS IN IT AND IF YOU'VE GOT IT TO PRINT OUT FINE,
13 BUT IF YOU NEED TIME WE'LL LET YOU GO UNTIL FIVE. MR. BRIGGS, I'M HAPPY
14 TO HEAR FROM YOU ON APPELLATE BOND.

15 MR. BRIGGS: YOUR HONOR, I'M GOING TO GIVE YOU ANOTHER
16 COPY. I CAN'T SEEM TO FIND THE ONE THAT WAS SIGNED IN BLUE INK BUT I
17 SIGNED THIS ONE A SECOND TIME.

18 THE COURT: YES, SIR.

19 MR. BRIGGS: YOUR HONOR, I'LL BE VERY BRIEF. I DO NOT
20 REMEMBER THE CODE SECTION ABOUT SETTING BONDS. WE DISCUSSED IT AT
21 GREAT LENGTH IN THE, QUOTE, CONTEMPT HEARING BEFORE JUDGE HANNA.
22 I'M SURE MR. FERNANDEZ CAN CITE THAT TO YOU AND YOU PROBABLY KNOW
23 IT BETTER THAN I DO. MY SINGLE POINT, AND I'VE GOT A SECOND ONE BUT MY
24 MAIN POINT, IS THAT I DON'T READ THAT ORDINANCE AS ALLOWING A TRIAL
25 JUDGE TO SET ANY CONDITIONS ON BOND AS JUDGE HANNA DID. THEY WERE

1 RESTRICTIVE AND ET CETERA, ET CETERA. I READ IT AS THE COURT IS
2 SUPPOSED TO SET A CASH BONF, PERIOD. NOW IF THE COURT READS IT
3 DIFFERENTLY I'M NOT GOING TO ARGUE ABOUT IT ANY FURTHER BUT I THINK IF
4 THERE IS A BOND SET THAT'S SUFFICIENT AND IF THE COURT WANTED TO STAY
5 THE SENTENCE PENDING APPEAL, THIS COURT CAN DO IT OR, OF COURSE, I CAN
6 ASK THE OTHER COURT TO DO IT, TOO. I DON'T ARGUE WHICH WAY THAT
7 OUGHT TO BE, YOUR HONOR. I'LL LEAVE THAT TO THE COURT.

8 DEFENDANT FALTAS: I'VE ALREADY PAID THE FINE.

9 MR. BRIGGS: YOUR HONOR, I WANT TO BE CAREFUL WHAT I SAY
10 ABOUT THIS BUT I STILL BELIEVE THAT IN THE TRIAL THAT I DEFENDED HER ON
11 THERE WAS NEVER ANY PROOF OF ANY WATER THERE. THEY DIDN'T HAVE A
12 PICTURE OF ANY WATER. AND I APOLOGIZE BEFORE I SAY IT BUT I THINK IT'S A
13 RINKY DINK ORDINANCE AND I STILL CANNOT BELIEVE THE CITY OF COLUMBIA
14 HAS SPENT AS MUCH MONEY ON PERSECUTING THIS WOMAN AS THEY HAVE.
15 AND SO IN THE INTEREST OF JUSTICE, YOUR HONOR, IN THE INTEREST OF
16 JUSTICE AND WITH THE COMMITMENT OF AN OFFICER OF THE COURT THAT
17 THAT PROPERTY WILL BE CLEANED UP, IT WILL BE CLEANED UP IF IT'S JUST ME
18 AND MY WIFE, AND, YOUR HONOR, SHE HAS GIVE ME PERMISSION TO DO THAT.
19 THERE'S NO QUESTION ABOUT THAT. AND I JUST ASK THAT A REASONABLE
20 BOND BE SET AND LET HER GO ON AND DO HER APPEAL THING AND I MAY ASK
21 TO BE RELIEVED IN THAT BUT THAT'S ANOTHER ISSUE. THAT DOESN'T HAVE
22 ANYTHING TO DO WITH THIS COURT, BUT I JUST THINK WITH EVERYTHING ELSE
23 THAT'S BEEN - JUDGMENTS THAT HAVE BEEN RENDRED THAT A VERY
24 REASONABLE BOND IS SUFFICIENT BECAUSE I JUST THINK IT'S APPROPRIATE,
25 YOUR HONOR.

1 **THE COURT:** MR. FERNANDEZ, ANY POSITION?

2 **MR. FERNANDEZ:** YES, YOUR HONOR. HAVING – MR. BRIGGS IS
3 CORRECT. WE’VE BEEN THROUGH THIS BEFORE. THE LAST APPEAL BOND THAT
4 WAS SET AND ONLY CONDITIONS THAT WERE APPLIED ON IT, THAT WAS JUDGE
5 HANNA. THAT WAS APPEALED. I BELIEVE JUDGE LEE HEARD THE MATTER,
6 ISSUED AN ORDER ON IT UPHOLDING WHAT WAS DONE. I CAN PROVIDE YOUR
7 HONOR WITH THAT ORDER IF YOU’D LIKE TO SEE THE ANALYSIS.

8 **THE COURT:** I DO NOT, THANK YOU.

9 **MR. FERNANDEZ:** I’M NOT ASKING FOR ANY ADDITIONAL
10 REQUIREMENTS AS FAR AS THIS BOND BUT, OF COURSE, DEFER TO THE COURT’S
11 BEST JUDGMENT. IT’S MY UNDERSTANDING THOUGH THAT THE APPEAL BOND
12 FOR CHARGE IS GENERALLY THE HIGHEST, THE MAXIMUM BOND AMOUNT CASH
13 THAT HAS TO BE PROVIDED WITH THE COURT. THAT’S MY UNDERSTANDING OF
14 THE APPEAL BOND PROCESS, YOUR HONOR.

15 **THE COURT:** AND WHAT IS YOUR UNDERSTANDING OF THE
16 MAXIMUM BOND AMOUNT ON THIS CHARGE?

17 **MR. FERNANDEZ:** THIS CHARGE I BELIEVE -- IS IT FOUR HUNDRED
18 AND SEVENTY DOLLARS?

19 **THE COURT:** THAT’S WHAT’S WRITTEN ON THE ORDINANCE.

20 **MR. FERNANDEZ:** I BELIEVE THAT’S IT., AND THEN – I MEAN
21 COSTS ARE ASSESSED ALSO.

22 **THE COURT:** TYPICALLY THE WAY THEY WRITE IT ON THE
23 SUMMONS IS INCLUSIVE SO IT’S PROBABLY – FOUR SEVENTY IS PROBABLY
24 EXCLUSIVE OF COSTS BUT I’LL LET THE OFFICER TELL THE OFFICER (INAUDIBLE)
25 IF HE HAS ANYTHING.

1 **MR. BRIGGS:** YOUR HONOR, JUST FOR THE RECORD THAT AMOUNT
2 WAS POSTED, THAT IS, THE NORMAL FINE WAS POSTED ON THIS OFFENSE.

3 **THE COURT:** ALL RIGHT. IS THAT MONEY WITH THE CITY NOW?

4 **DEFENDANT FALTAS:** YES, SIR, IT STILL IS.

5 **MR. LUPTON:** THAT'S CORRECT, YOUR HONOR. FOUR SEVENTY.

6 **THE COURT:** ALL RIGHT. BOND WILL BE SET AT FOUR HUNDRED
7 AND SEVENTY DOLLARS. I'M NOT SETTING ANY CONDITIONS AT THIS TIME.

8 **DEFENDANT FALTAS:** THANK YOU, YOUR HONOR. NOW THE BOND
9 THAT HAS ALREADY BEEN PAID IS THE BOND, RIGHT?

10 **MR. FERNANDEZ:** THE BOND THAT'S BEEN PAID WAS ACTUALLY
11 THE BOND FOR THE CHARGE ITSELF BUT I DON'T THINK THE COURT WOULD
12 HAVE ANY ISSUE TRANSFERRING THE BOND SET FOR THE CHARGE AND KIND OF
13 CONVERTING IT TO AN APPEAL BOND. I BELIEVE THE COURT – AND THIS IS A
14 JUDGE TURNER QUESTION – I BELIEVE THE COURT PROBABLY HAS A SEPARATE
15 ACCOUNT FOR THAT KIND OF THING. WE'VE BEEN THROUGH – I'VE BEEN
16 THROUGH APPEAL BONDS WITH THIS DEFENDANT BEFORE AND TWO OTHERS
17 DEFENDANTS SO IT'S NOT – I KNOW THAT THERE'S SOME EXPERIENCE WITH
18 APPEAL BONDS HERE. I DON'T THINK THAT'S VERY DIFFICULT FOR THE COURT
19 TO DO.

20 **MR. BRIGGS:** YOUR HONOR, I WOULD ADD THAT TECHNICALLY
21 SINCE YOU DID NOT FINE HER FOR THIS OFFENSE.

22 **THE COURT:** IN TERMS OF MONEY. I GAVE HER JAIL TIME.

23 **MR. BRIGGS:** SO THAT MONEY IS FREE.

24 **THE COURT:** THE ANSWER IS FOUR HUNDRED SEVENTY DOLLARS
25 HAS TO BE PAID AS AN APPEAL BOND. IF THAT CAN BE ADMINISTRATIVELY

1 TRANSFERRED THAT'S FINE. IF YOU HAVE TO GET A REFUND AND THEN PAY IT,
2 THAT'S WHAT YOU'VE GOT TO DO. I'M NOT IN CHARGE OF THE MONEY. AND
3 THE APPEAL BOND HAS TO BE PAID BY FIVE O'CLOCK TOMORROW. IF THE
4 MONEY IS NOT FREED BY FIVE O'CLOCK TOMORROW, FIND FOUR HUNDRED AND
5 SEVENTY DOLLARS FROM SOMEWHERE ELSE UNTIL YOU GET IT FREE. BUT I
6 DON'T WANT TO GET CAUGHT IN SOME I DON'T KNOW WHAT ACCOUNT IT'S IN
7 SO YOU'VE GOT TO HAVE FOUR SEVENTY FOR THE APPEAL BOND BY FIVE
8 O'CLOCK TOMORROW. YES, SIR.

9 DEFENDANT FALTAS: MAY I SAY IF IT'S NOT - IF THE BOND IS NOT
10 FREED BY TOMORROW AND THE APPEAL BOND IS PAID SINCE I'M ONLY GIVEN A
11 JAIL SENTENCE, CAN THE TRIAL BOND BE REFUNDED?

12 THE COURT: THERE IS AN APPROPRIATE REVENUE AVENUE FOR
13 GETTING A REFUND OF A BOND IF IT'S NOT OWED AT THE END OF TRIAL.
14 YOU'VE GOT TO FOLLOW THAT PROCESS.

15 DEFENDANT FALTAS: BUT YOUR HONOR IS RULING THAT THE
16 BOND -

17 THE COURT: I AM RULING THAT YOU HAVE A THIRTY-DAY
18 SENTENCE.

19 DEFENDANT FALTAS: AND NO FINE.

20 THE COURT: I AM RULING THAT YOU HAVE A THIRTY-DAY
21 SENTENCE.

22 DEFENDANT FALTAS: OKAY.

23 THE COURT: YES, SIR.

24 MR. LUPTON: MY UNDERSTANDING IS THAT THERE WAS NO -
25 THAT THIS WAS A P.R. BOND FOR THE SIMPLE ASSAULT AND I WOULD ASK THAT

1 THE COURT EITHER GRANT THE P.R. BOND ON THIS OR IN THE ALTERNATIVE IF
2 THE COURT IS GOING TO IMPOSE A CASH BOND THAT THE COURT BECAUSE
3 THERE IS NOT OTHER MONEY TO BE PAID AND BECAUSE OF FINANCIAL ISSUES
4 THAT THE COURT WOULD CONSIDER GIVE THE LATE HOUR TONIGHT, THE COURT
5 CONSIDER GIVING HER A LITTLE BIT OF EXTRA TIME BEFORE FIVE O'CLOCK
6 TOMORROW TO PAY ANY ADDITIONAL APPEAL BOND ON THE SIMPLE ASSAULT.
7 OR SIMPLY RUN IT CONCURRENT.

8 THE COURT: DOES SHE HAVE ANY ASSETS?

9 MR. LUPTON: YOUR HONOR, THE ONLY ASSET THAT SHE HAS I'M
10 AWARE OF IN TERMS OF REAL PROPERTY IS THE PROPERTY THAT SHE OWNS
11 WITH HER MOTION ON BRYON STREET.

12 THE COURT: DO WE KNOW THE VALUE OF THAT PROPERTY?

13 MR. LUPTON: YOUR HONOR, SHE MAY KNOW THAT.

14 THE COURT: DO YOU KNOW THE VALUE OF THAT PROPERTY?

15 DEFENDANT FALTAS: YOUR HONOR, --

16 MR. BRIGGS: ANSWER THE QUESTION.

17 DEFENDANT FALTAS: YOUR HONOR, THE PURCHAS PRICE WAS
18 FOUR THOUSAND DOLLARS BUT IT'S CO-OWNED. IT'S CO-OWNED.

19 THE COURT: WHAT'S THE VALUE NOW? DO YOU KNOW?

20 DEFENDANT FALTAS: I GUESS IT'S THE SAME TAX ESTIMATE BUT I
21 DON'T THINK ANYONE WOULD BUY IT.

22 THE COURT: DO YOU HAVE ANY OTHER ASSETS?

23 DEFENDANT FALTAS: NO. (INAUDIBLE).

24 THE COURT: DON'T LIMIT THEM. HAVE YOU GOT ANY KIND OF
25 ASSETS THAT ARE WORTH SOMETHING?

1 **DEFENDANT FALTAS:** NO, NO. I MEAN NOTHING THAT'S LIQUID.

2 **THE COURT:** YES, SIR.

3 **MR. BRIGGS:** YOUR HONOR, OF COURSE, I CANNOT PAY HER BOND
4 BUT I'VE BEEN IN TOUCH WITH PEOPLE. I KNOW THAT A LOAN COULD BE MADE
5 TO HER TO PAY FOUR HUNDRED SEVENTY DOLLARS, YOUR HONOR, BY
6 TOMORROW.

7 **THE COURT:** YES, SIR.

8 **MR. FERNANDEZ:** SIMILAR TO THE OTHER BOND, AN APPEAL
9 BOND SHOULD GENERALLY BE THE MAXIMUM BOND AMOUNT. SIMPLE
10 ASSAULT CARRIES A HIGHER FINE THAN FOUR HUNDRED AND SEVENTY
11 DOLLARS.

12 **THE COURT:** OKAY. ANYTHING FURTHER FROM ANYBODY?

13 **MR. LUPTON:** YOUR HONOR, WHATEVER NORMAL IS, THE COURT
14 HAS DISCRETION. I WOULD ASK THE COURT TO EXERCISE THAT DISCRETION IN
15 FAVOR OF GRANTING A BOND THAT'S LOWER THAN THE MAXIMUM.

16 **MR. LUPTON:** COULD WE ADD A HUNDRED DOLLARS TO IT, YOUR
17 HONOR, JUST TRYING TO HELP?

18 **THE COURT:** NO, SIR. WE ARE GOING TO DO ONE THOUSAND
19 NINETY-TWO FIFTY. NO CONDITIONS. ALL RIGHT?

20 **DEFENDANT FALTAS:** AM I ALLOWED TO TRAVEL, YOUR HONOR,
21 OUT OF STATE?

22 **THE COURT:** I'VE SET NO CONDITIONS ON YOUR BOND.

23 **DEFENDANT FALTAS:** THANK YOU.

24 **THE COURT:** THE BOND HAS TO BE PAID BY FIVE O'CLOCK
25 TOMORROW, WHETHER THAT BE THROUGH TRANSFER ON THE FIRST ONE OR

1 THROUGH PAYMENT. SECOND BOND HAS TO BE PAID AS WELL. THEY ARE TWO
2 INDIVIDUAL BONDS. IF YOU FAIL TO PAY THEM BY FIVE O'CLOCK TOMORROW
3 WE ARE GOING TO ISSUE A BENCH WARRANT FOR YOU AND YOU'LL HAVE TO
4 SEEK AN APPEAL BOND FROM THE NEXT COURT UP.

5 DEFENDANT FALTAS: MY QUESTION IF IT PLEASES THE COURT, DO
6 I NEED TO COME OR DOES COUNSEL?

7 THE COURT: I JUST WANT IT PAID.

8 DEFENDANT FALTAS: OKAY.

9 MR. FERNANDEZ: THANK YOU, YOUR HONOR.

10 THE COURT: THANK Y'ALL VERY MUCH.

11 MR. LUPTON: THANK YOU, YOUR HONOR.

12 (ADJOURNED)

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1 DECEMBER 13, 2013

2 (WHEREUPON, the hearing commenced at
3 11:38 a.m.)

4 THE COURT: The next matters I have are both
5 *The City of Columbia v. Marie Faltas*. One is
6 Docket Number 2013-CP-40-03522, and the other one
7 is 2013-CP-40-03525.

8 The City is represented by David Fernandez.
9 Ms. Faltas -- Dr. Faltas is present and, as well,
10 Tristan Shaffer; is that correct?

11 MR. SHAFFER: Yes, Your Honor.

12 THE COURT: And I understand that these are
13 both appeals from Municipal Court. And while they
14 arise out of different charges, I guess for
15 purposes of these appeals we can keep them
16 together.

17 And to the extent that we need to discuss them
18 individually, if you can identify for the record
19 which case we're talking about.

20 One is an appeal dealing with an assault, and
21 the other is an appeal dealing with issues relating
22 to a municipal statute related to unlawful acts, I
23 guess, related to the property, rubbish ordinances.
24 And that is 3525. The assault is 3522.

25 I understand that there were a number of

1 documents that were sent to the Supreme Court
2 relating to Dr. Faltas' right to be able to
3 proceed. And I think there is also a motion by
4 Mr. Shaffer to be relieved; is that correct?

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

6 THE COURT: Based upon the order that was
7 issued by the Supreme Court, I believe it was on
8 November 7th of 2013, while the Supreme Court
9 denied Mr. Shaffer's motion, they modified some of
10 their previous orders relating to requiring Dr.
11 Faltas to have counsel to represent her in civil
12 matters.

13 And in that order dated November 7th of 2013,
14 the Supreme Court indicated that Dr. Faltas may
15 proceed *pro se* in criminal actions in which she is
16 a defendant, and again reminded her that her right
17 to proceed in criminal actions *pro se* is not
18 absolute, but may be forfeited on a case-by-case
19 basis in the discretion of the Court.

20 So based upon that, Mr. Shaffer, I don't have
21 any problem relieving you of counsel as it relates
22 to these two criminal cases, but these are appeals.
23 While they are civil here, they are criminal in
24 nature because they were arising out of criminal
25 charges for which she could be imprisoned, and so I

1 will allow her to represent herself *pro se* as it
2 relates to those appeals.

3 Anything further as it relates to the
4 representation issue?

5 MR. SHAFFER: No, Your Honor. Well, nothing
6 from me, Your Honor.

7 THE COURT: Okay.

8 DR. FALTAS: Your Honor, good morning.

9 THE COURT: Good morning.

10 DR. FALTAS: And it is always a pleasure to
11 see Your Honor. I hope he doesn't leave yet,
12 because there are issues about the record being
13 complete which he should answer to the Court for.
14 But I hope the next time I see Your Honor it will
15 be in Federal Court.

16 THE COURT: Well, I have a record, being a
17 transcript from the criminal proceedings below.

18 DR. FALTAS: Totally incomplete. The exhibits
19 were not sent. As early -- as soon as Mr. Shaffer
20 was appointed --

21 THE COURT: Well, now -- and I don't mean to
22 interrupt -- I'm not trying to be rude, Dr. Faltas.
23 I just want -- if there are exhibits that are
24 before the Magistrate's Court, I can request those
25 exhibits.

1 DR. FALTAS: Well, please do. But I want to
2 report to the Court that Mr. Shaffer was derelict,
3 totally derelict.

4 THE COURT: And I'm not going to address those
5 matters.

6 DR. FALTAS: Okay, fine. Fine. But on my
7 side, while representation was forced on me, I did
8 what I could by reminding him several times to get
9 the exhibits, not only the exhibits. This -- as
10 large as the transcript seems, it is incomplete,
11 because there were three prior hearings, and there
12 were jury selection issues that I asked to be
13 transcribed.

14 Again, at that time, I was being forced to act
15 through Mr. Shaffer. And I want him, as an officer
16 of the court, to tell Your Honor that I reminded
17 him of that early on.

18 But, you know, all of this might be kind of
19 moot because it is clear. And I was directed that
20 I may submit a proposed order, and I did.

21 THE COURT: Yes, ma'am, I received those.

22 DR. FALTAS: All right. It is just we don't
23 even need to worry about anything. It is
24 structural error. The Supreme Court itself in the
25 7 November 2013 order acknowledged that the denial

1 of my right to self-representation violated
2 *Faretta*. And shortly before the November 7th
3 order, a majority of the Court, with the current
4 Chief Justice in the minority, said that in South
5 Carolina we will not even deny the right to
6 self-representation based on mental health issues.
7 And they reversed a death penalty and the
8 conviction solely because of the structural error
9 of denial of self-representation.

10 So I think we can make it very brief and do
11 this. However, Your Honor knows the respect I have
12 for you, Your Honor also knows my courage. I am
13 not at liberty to say the content of the complaint
14 I filed against the current Chief Justice's
15 re-election, but it was made public record by the
16 Judicial Merit Selection Commission that I had
17 filed a complaint against her.

18 And in the public record, when they listed the
19 secret ballot, they said something like 200 people
20 said she was unqualified, I think, by secret
21 ballot. But I was the only one in the length and
22 breadth of South Carolina who had the courage to
23 put my name on what I say. And now I have the
24 courage. And I hope Your Honor has the same
25 courage to look into a four-year history of total

1 deterioration of the court. Perjury is a crime.

2 THE COURT: Let me -- and, Dr. Faltas, you
3 know that I respect you. And I understand that --
4 and I realize your abilities and your arguments.
5 But I am going to try to -- I am here to hear an
6 appeal, and I am going to try to keep them focused
7 within those issues, those legal issues which I
8 have to consider.

9 Now, you raised an issue about representation,
10 and you referred to -- and I'm not talking about
11 *Faretta*, I'm not talking about the U.S. Supreme
12 Court decision, I believe you indicated that there
13 were South Carolina decisions that held that the
14 right to self-representation was inviolate. And so
15 I would like for you to be able to tell me, if you
16 can cite to it or tell me which case that is so
17 that I can make sure that I'm familiar with it.

18 DR. FALTAS: Yes, Your Honor. In the proposed
19 order -- and I looked to see if it had reached
20 publication yet, but it has not. It is *State v.*
21 *Barnes*. And it was decided October 16th,
22 Mr. Shaffer? October 16th, 2013. And in the
23 proposed order I have the Shearouse number, the
24 Shearouse Advance Sheet number.

25 I'm sorry, Your Honor, because of a knee

1 issue, may I address the Court from a seated
2 position?

3 THE COURT: I'm sorry?

4 DR. FALTAS: Because of my knee, may I address
5 the Court from a seated position?

6 THE COURT: Yes, ma'am, as long as you are
7 seated in front of that microphone so we can make
8 sure we hear you.

9 DR. FALTAS: Let me pull it over.

10 THE COURT: Because I'm looking at your
11 proposed order, and I'm trying to --

12 DR. FALTAS: At the very top, Your Honor, I
13 mean, the very --

14 THE COURT: I see it, yes, ma'am. *State v.*
15 *Barnes*, Opinion Number 27322, decided October 16th
16 of 2013.

17 DR. FALTAS: The last time I looked at it,
18 which was very recently, it didn't have either the
19 South Carolina or the Southeastern 2nd citation,
20 but *State v. Rivera* did. And in it -- and that was
21 unanimous. They went -- and I quoted at length
22 from it -- structural error means just that. You
23 can't get past it. You don't need to look at
24 prejudice, you don't need to look at anything else.

25 THE COURT: And that is cited in your order?

1 DR. FALTAS: Yes.

2 THE COURT: And that is 741 S.E.2d 694, a 2013
3 case?

4 DR. FALTAS: Yes, Your Honor. And, I'm sorry,
5 I didn't -- I forget the pages that I quoted from,
6 but I quoted them verbatim. And mostly -- mostly
7 they quote from U.S. Supreme Court decisions that
8 explain structural errors.

9 And as it stands now the U.S. Supreme Court's
10 jurisprudence has four or five types of structural
11 error: Denial of self-representation; denial of
12 the choice of one's counsel -- which is a little
13 different, but in my case it merges because my
14 choice was to be my own counsel; denial of
15 instruction -- denial of the reasonable doubt
16 instruction; denial of a representative jury of the
17 community; and trial before a bias judge.

18 So these are five structural errors that the
19 U.S. Supreme Court has long explained, and finally
20 the State of South Carolina acknowledged them.

21 THE COURT: Now, is that the only claim that
22 you are standing on today as it relates to these
23 cases?

24 DR. FALTAS: Absolutely not. Absolutely not.

25 THE COURT: Then --

1 DR. FALTAS: And, in fact, I want to say that
2 there are other areas of structural error.

3 The bias of judge, which I have been stating
4 that I have civil lawsuits against the City of
5 Columbia, the City of Columbia Municipal Court,
6 the --

7 THE COURT: Well, let's take up your appeal in
8 the 3522 case. That was the trial before Carl
9 Solomon, Municipal Court judge, on the assault
10 claim.

11 DR. FALTAS: No. No, 25 was the property.

12 THE COURT: If I said 25, I didn't mean 25. I
13 said 3522. If I misspoke, I'm sorry.

14 DR. FALTAS: No, I'm just trying to keep --

15 THE COURT: Okay. I'm just saying -- and
16 that's fine. I'm referring to 2013-CP-40-3522.

17 DR. FALTAS: Yes, Your Honor.

18 THE COURT: And from what I understood by
19 reading a portion of the transcript -- and I did
20 not read the entire transcript -- it related to
21 assault claims.

22 DR. FALTAS: One. One.

23 THE COURT: An assault claim?

24 DR. FALTAS: Yes, Your Honor.

25 THE COURT: And so there is a transcript. You

1 were at that hearing represented by Ted Lupton.

2 DR. FALTAS: Against my will.

3 THE COURT: I understand. And that issue you
4 have already raised. So I'm looking for what are
5 the legal errors that you are asserting as it
6 relates to that particular appeal.

7 DR. FALTAS: Your Honor, first of all, if you
8 go -- I don't know how far you went in the
9 transcript, but very early on I was -- I had also
10 asked Mr. Lupton to ask for Judge Solomon to
11 recuse, and he refused to. So that never got on
12 the record. So one of the structural errors is
13 that the City of Columbia Municipal Court is owned
14 and operated by the City of Columbia, which is my
15 adversary in a civil -- in several civil lawsuits
16 in Federal Court.

17 Also -- also, on a federal level -- and there
18 is a very sophisticated federal argument that I
19 wish to bring in Federal Court as soon as I can
20 catch my breath, and that is something that my
21 thinking about it evolved, and also
22 contemporaneously cases from the U.S. Supreme Court
23 came down along with my line of thinking.

24 THE COURT: Let's talk about --

25 DR. FALTAS: That's what I'm talking about.

1 THE COURT: Let's talk about the legal basis
2 for the appeal separate and apart from your
3 argument that Judge Solomon should be recused
4 because he is a municipal judge that is appointed
5 by the City of Columbia and there is a problem with
6 that.

7 I understand that you have made those
8 arguments before, and I understand those arguments,
9 and so we can move on beyond that one.

10 DR. FALTAS: So what I'm saying is the City of
11 Columbia cannot have a court.

12 THE COURT: Cannot what?

13 DR. FALTAS: Cannot have a court.

14 THE COURT: And let's move beyond that, Dr.
15 Faltas. I'm looking for the substantive -- as it
16 relates to the charge and the evidence that was
17 presented in the trial.

18 DR. FALTAS: Okay. But could I just put on
19 the record that the federal constitution, what
20 makes the United States the United States is that
21 it is the unity of only two levels of sovereignty:
22 Federal and state. It is not the United Townships
23 of America, it is not the United Citizens of
24 America, it is not the United People of America, it
25 is the United States of America.

1 court. And then before the General Sessions trial
2 Heather Weiss went and got the tapes and had a
3 separate court reporter transcribe it. But in it
4 this is where my false accuser admitted that she
5 came to my apartment and that she saw me with just
6 the paper and she was scraping paint from the
7 building. So she was armed. I only had the paper
8 in my hand.

9 And, Your Honor, if I may end with a joke. It
10 is said that the pen is mightier than the sword,
11 but no one would ever say that a sheet of paper is
12 an assault weapon.

13 THE COURT: Mr. Hernandez -- I'm sorry,
14 Fernandez?

15 MR. FERNANDEZ: Thank you, Your Honor. Well,
16 I'll begin with the right of self-representation.

17 Nowhere in the transcripts did the Defendant
18 ever make a request to proceed *pro se*. I have
19 reviewed both transcripts provided. And they are
20 lengthy. And nowhere did she request to proceed
21 *pro se*.

22 As Your Honor is probably aware,
23 constitutional issues must still be preserved just
24 like any other, and her lack of indicating to the
25 Court that she wanted to proceed *pro se* did not

1 permit the Court to make a ruling on the subject.
2 Therefore, nothing is preserved for appeal. She
3 didn't preserve it in her grounds for appeal either
4 on the property code violation case. On the simple
5 assault they did put that in as a grounds for
6 appeal, but it wasn't preserved in the record
7 below.

8 THE COURT: Let me ask, Mr. Fernandez, Dr.
9 Faltas has indicated that there were pretrial
10 hearings that have not been transcribed?

11 MR. FERNANDEZ: I can't say, because there
12 were many hearings. So it is certainly possible
13 that it came up before. However, the argument --

14 DR. FALTAS: Actually, Your Honor --

15 THE COURT: Please let him talk. I will give
16 you a chance for any rebuttal.

17 MR. FERNANDEZ: Your Honor, the argument as I
18 recall -- and if Your Honor would prefer to have
19 the hearing transcribed, that is fine with me too,
20 so you will know what we are talking about. But
21 frequently it was complaints by Ms. Faltas about
22 her representation. She didn't like the attorneys.
23 That is the ongoing struggle between her and her
24 revolving door of attorneys that represented her
25 over time. That is what I recall the primary

1 issues to be, is that she wanted new attorneys.

2 Now, I have seen some transcripts from --
3 there is an order -- there is a couple of orders in
4 the record from Judge Manning denying her the
5 ability to fire, I guess, denying the request to be
6 relieved, and also one from I think Judge Barber.
7 So if that would be incorporated, what I would then
8 argue is you can't appeal a Circuit Court order to
9 the Circuit Court. The appropriate avenue is to
10 appeal that to the Court of Appeals. She has not
11 done that. So I think it is not proper for this
12 Court to hear that motion for those two reasons:
13 One, it wasn't raised below; then, two, if it is
14 the order -- the Municipal Court did not determine
15 counsel, did not assign counsel, did not deny
16 counsel being relieved. That was the Circuit Court
17 arguing that. Two judges, it may have been more, I
18 don't know. Maybe -- I think Judge Cooper might
19 have also been involved in that process as well. I
20 wasn't present for those hearings. But, in any
21 event, if it was -- if the Defendant now argues
22 that that is improper, she needs to have appealed
23 those orders and not ignore them and then now claim
24 for the first time that she didn't want to proceed
25 *pro se* -- I mean, she wanted to proceed *pro se*.

1 As far as all the other grounds, Your Honor,
2 the only matters that were preserved on the record
3 and in her ground for appeal relating to the
4 ordinances was *Beachfront Entertainment v. Town of*
5 *Sullivan's Island*. I didn't hear her argue that
6 case.

7 DR. FALTAS: Your Honor, that case --

8 THE COURT: Dr. Faltas, please allow him to
9 finish his argument.

10 DR. FALTAS: Okay.

11 THE COURT: Without interrupting. And then I
12 will give you a chance to respond.

13 MR. FERNANDEZ: I didn't hear her argue that
14 case in particular. That was the only ground that
15 was raised from that trial, the ordinance -- the
16 code violations. That is the only ground. That
17 has to do with the preemption argument, Your Honor.

18 And the appropriate standard for that was the
19 one that was applied to the City. The state law
20 gives power to municipalities to adopt nationally
21 recognized codes and standards, Section 6-9-60. I
22 do have a copy for Your Honor, if you would like
23 it. It delegates the power to municipalities to
24 adopt code violation cases, specifically for -- it
25 references property maintenance.

1 The statute does specifically also say that it
2 needs to be made available by the International
3 Code Council. That is the entity that publishes
4 the International Property Code Maintenance, which
5 is exactly the same code violations that the City
6 incorporated.

7 THE COURT: And that is as to the ordinance in
8 Case Number 3525?

9 MR. FERNANDEZ: Correct. No, I'm sorry, 3522.
10 22 is the code violation.

11 DR. FALTAS: No.

12 THE COURT: No, 25 is the code violation.

13 MR. FERNANDEZ: Oh, I'm sorry. Okay. That is
14 only relating to that, Your Honor, yes, Your Honor.

15 The City adopted under the authority granted
16 to it by the state legislature to state the exact
17 property code maintenance articles that were
18 prescribed by the state. There is nothing
19 preempted here. The State has given us the power
20 to do that. And so the preemption argument didn't
21 apply. So it is pretty clearly on point. And that
22 was the only ground that was raised on their
23 appeal.

24 THE COURT: In 3525?

25 MR. FERNANDEZ: In 3525, yes, Your Honor. So

1 as far as that trial was concerned, the only ground
2 raised is inapplicable.

3 Moving to the -- we heard a lot more about the
4 simple assault case. Your Honor, I would then
5 argue, if you will look at the grounds for appeal
6 there, the only appeal grounds are that the City --
7 I'm sorry, that the judge did not direct a verdict
8 of not guilty. Then the denial of the right to
9 represent herself. And then any other grounds that
10 appear in the transcript, although that is not
11 sufficient grounds for an appeal. The general
12 catchall, any other grounds which have been held
13 not to be sufficient, it needs to be specific as
14 required by the statute for appeal.

15 So if we are going to take the one that says
16 directed verdict of not guilty, it should have been
17 proven. That is the injury aspect that we heard
18 the Defendant argue. And in that respect, she
19 proceeded under the charge for simple assault. It
20 does require an assault and battery. Two witnesses
21 testified that there was an assault and battery.
22 There was an offer and contact. The offer was the
23 aggressive nature of the Defendant. She was
24 approaching Ms. Steele. Ms. Steele tried to leave.
25 She pursued -- the Defendant pursued, and

1 ultimately three strikes to the chest and spun her
2 around.

3 The Charlene Crouch, I corroborate all of
4 that. She witnessed it. The judge, when he ruled
5 guilty, he said that he reviewed all applicable
6 case law on the matter and was content that he
7 was -- he was content with his understanding of the
8 assault law of South Carolina. So there was a
9 knowledge there, that he acknowledged that he had
10 done his own research, in addition to whatever was
11 argued by both counsel, and came to the conclusion
12 that she in fact did strike the victim.

13 I can address all the other matters, but they
14 were not raised either in the grounds for appeal or
15 on the record below. So if Your Honor would like
16 me to go through them, I can, very briefly. I
17 leave it up to the Court.

18 THE COURT: Yes, sir, you might as well
19 address them.

20 MR. FERNANDEZ: Okay, thank you.

21 THE COURT: So we don't have to discuss it
22 again.

23 MR. FERNANDEZ: The recusal motion -- what
24 Ms. Faltas has done, I think she moved to recuse
25 every judge she has come in front of down there.

1 So that created a scheduling -- and sometimes
2 judges did recuse themselves, sometimes they
3 didn't. They created a scheduling issue, because
4 there is only a certain amount of judges down
5 there, and they all are part-time judges, they are
6 not full-time. So it creates a -- dealing with
7 their private practices and getting them into court
8 on certain days when we have juries available, it
9 creates a scheduling issue. So time needs to be
10 built in for that.

11 But as to Judge Solomon's recusal, I don't
12 know if she did ask that he recuse himself. I
13 can't speak to that. Obviously he denied it if she
14 did. However, she obviously was not that aggrieved
15 because she did ask for a bench trial. And she
16 didn't do it under duress because, in fact, the
17 only -- the transcript, really all it says from her
18 is that, I don't want a jury trial. So she doesn't
19 say any reason why, because it is simply a
20 strategic decision on her part at that point. And
21 it was likely based on what -- she made a
22 determination based on what she was going to be
23 able to talk about because she wasn't going to be
24 able to kitchen-sink the trial and just talk about
25 everything that she thought applied, she made a

1 conscious decision to go forward with a bench
2 trial. And it did provide her greater latitude, as
3 the judge acknowledged, because the judge was able
4 to sit through and hear all of it.

5 The point being, none of it was made under
6 duress. There was no indication of that at all,
7 and certainly no objection from counsel or the
8 Defendants at that point. So that just does not
9 appear to be true.

10 The assault, as far as it being an assault,
11 the victim and the witness both testified that
12 there was a physical striking -- pushing, striking,
13 however they characterized it, that it was
14 certainly an assault. I heard the argument about
15 it being physically impossible, but certainly it is
16 possible to strike someone and not burst the
17 capillaries.

18 The jury trial waiver. We talked about the
19 bench trial.

20 The improper jury. Well, she waived all those
21 issues about there being an improper jury or her
22 request for her demand for a jury trial. She
23 waives those when she doesn't proceed with one.
24 You can't just say, I want -- the jury pool was
25 improper. But she didn't go forward with a jury

1 trial, so she waived that argument. She chose to
2 go forward with a bench trial. No one pursued her.
3 In fact, she demanded it. I was the one that had
4 to react to that, because I was expecting a jury
5 trial.

6 So she waived the argument about anything that
7 occurred regarding the jury because she didn't
8 pursue the jury trial.

9 Charlene Crouch, I provided a NCIC rap sheet
10 to counsel and myself, and I think the judge had a
11 copy too. That is what we relied on for prior
12 convictions. It is what it is. It is a rap sheet.
13 Whatever is on there is what is reported I guess to
14 SLED. And if it is not on there, then I have no
15 idea what it is. And certainly they could have
16 asked Ms. Crouch if she was intoxicated at the
17 time, if she pled guilty to -- Lord knows, they
18 went well beyond the general record, so I don't
19 know -- they obviously made a strategic decision
20 not to ask those questions, but there was
21 certainly -- the confrontation clause was
22 satisfied. Ms. Crouch was on the stand to answer
23 any questions they asked her. They just declined
24 to ask her those kind of questions.

25 So as far as - I know -- you are probably used

1 to it by now -- but all those accusations about
2 misconduct. The point is we provided all the
3 documentation we had. And at no point did the
4 Defendant at all raise the issue of this prior
5 drunkenness conviction. If it was such a central
6 tenet to her defense, certainly they should have
7 asked the question on the stand if she was drunk or
8 not. And they did not do that.

9 And I think there was at one point where there
10 was something brought up about the molestation
11 case. I do recall -- and I don't know if the
12 record reflects this or not. I'm sure it wasn't,
13 because I was talking to her privately. But I do
14 recall asking Ms. Crouch about that. And she
15 indicated I think to the Court too that she didn't
16 know anything about that. So I don't know what
17 happened there. I still don't. I hear what the
18 Defendant says. I don't know what happened there.
19 And I just don't -- I think Your Honor has already
20 ruled.

21 About my saying that they were friends, her
22 and Charlene Crouch, well, that is because the
23 Defendant testified that she would talk with
24 Ms. Crouch and share stories about the apartment
25 complex and about some fruit baskets or something.

1 I mean, they were sharing stories. So I don't
2 think that is a stretch to say that -- I didn't say
3 they were friends, I just said that they were on
4 speaking terms. And they were. And that goes to
5 the credibility of Ms. Crouch, that it wasn't a
6 bitter hostility apparently between them because
7 they both felt comfortable enough talking to each
8 other at certain points during their stay at the
9 apartment complex. So I don't believe that is at
10 all misleading. It is just the record.

11 If the judge chooses not to believe the
12 testimony of the Defendant, there is no obligation
13 that the judge ask the Defendant to somehow clarify
14 or recant. The Defendant had an opportunity to
15 testify. And if the judge didn't believe what she
16 was saying, which he clearly did not, that is her
17 problem. And she had an opportunity to testify.
18 The judge doesn't owe her any kind of chance to
19 change her testimony or amend her testimony. She
20 chose to say what she chose to say. He found it
21 very unbelievable. And that is just how the trial
22 went. There is no obligation on the Court to
23 somehow give the Defendant an ability to
24 rehabilitate themselves.

25 The speedy trial. That kind of goes to the

1 other part. There had been numerous requests for
2 speedy trial. We actually tried to try multiple
3 cases before where the Defendant comes up with an
4 illness or mid-trial has an illness where she has
5 to be taken to the hospital. That is not uncommon.

6 Also, on the speedy trial motion, she will
7 either move for the judge to recuse themselves, and
8 I guess sometimes it has worked, obviously required
9 a continuance. Other times she has an injury or
10 the illness thing. Then other times she has
11 demanded that an attorney be appointed, but I find
12 it ironic that sometimes she says she wants to go
13 ahead *pro se*, other times she is demanding that she
14 be appointed a public attorney.

15 It is all just a shell game, in my experience,
16 that it is either -- it is one thing or the other,
17 but you can't speak out of both sides of your
18 mouth.

19 On this particular case, like I said, she did
20 not demand to proceed *pro se*. And I think that
21 goes to a speedy trial credibility. Obviously the
22 other judges knew or have heard the speedy trial
23 motion. They found that the contributing factor
24 for why the cases were not tried was due to the
25 Defendant herself, not because of any reluctance on

1 the City's part.

2 And if Your Honor wants those transcripts, I'm
3 sure the Court can dig them up, but they will
4 reflect that, that it was simply because of the
5 Defendant's own actions and behavior, not because
6 the City in any way was not able to go forward. We
7 were able to go forward for quite some time.

8 I think I addressed -- unless Your Honor has
9 any remaining concerns, I think I addressed all the
10 issues raised by the Defendant.

11 THE COURT: Thank you.

12 MR. FERNANDEZ: Thank you.

13 THE COURT: Any response, Dr. Faltas?

14 DR. FALTAS: Yes, Your Honor. Two
15 housekeeping matters first. I think Your Honor
16 clearly directed me to first argue the assault
17 case; and after he had responded and I had replied,
18 we were going to go to the property case. But he
19 went ahead and argued the property case, which I
20 had not -- did I misunderstand Your Honor?

21 THE COURT: No, ma'am. We started off with
22 that. And I understand that there is some issues
23 that may overlap into the property case, but if you
24 will just skip over the argument so far about the
25 property case, then we'll come -- and actually we

1 will take a lunch break before we get to the
2 property case.

3 DR. FALTAS: All right, thank you. And the
4 other housekeeping matter, Your Honor, is that
5 there had been an extreme, extreme financial
6 hardship on me. And part of that is the delay of
7 the appeal and also the fact that I had to pay an
8 exorbitant appeal bond. And the appeal bond is
9 just for showing up. It is a bond for me to appear
10 at the next hearing of the Circuit Court, which I
11 did last time when it was scheduled before Judge
12 Barber.

13 So even if that doesn't count for appeal and
14 that bond is not contingent on the result of the
15 appeal, so I would like Your Honor, since I
16 appeared and defended, I would like Your Honor to
17 order them to refund the bond because it has
18 fulfilled its purpose. And I would like Your
19 Honor, if it please the Court, to order immediately
20 that -- and, God forbid, should Your Honor rule
21 adversely to me, it would be up to Your Honor to
22 set a new appeal bond for me to appeal further, but
23 in that case I will tell Your Honor, as I have told
24 Your Honor before, when I was facing six years plus
25 enhancement under the false harassment charges. I

1 did not escape. I stayed. I defended myself *pro*
2 *se*. And, thank God, I prevailed.

3 So also I have a much higher vested interest
4 in getting the false convictions reversed, my
5 professional license, and my ability to convert my
6 lawful immigrant status to citizenship.

7 So Your Honor I think would be completely
8 satisfied, so I would like as a housekeeping matter
9 for you to order them to refund my appeal bond,
10 because, you know, my sisters have sold everything
11 they can sell to keep me -- to keep a roof above my
12 head for all my past four years.

13 THE COURT: All right, Dr. Faltas, I'll
14 consider that matter. Any response?

15 DR. FALTAS: Oh, absolutely. Absolutely.
16 Absolutely. Absolutely. Absolutely. First of
17 all, the word duress is in the transcript. And I
18 can show Your Honor the line and page if you would
19 hand me the transcript.

20 THE COURT: I intend to read the transcript,
21 so I'll look for it.

22 DR. FALTAS: And I have also, because all
23 upper case transcript is tedious, I had scanned it
24 then converted the upper case to lower, so I have
25 it much nicer. It is the same -- which I can email

1 Your Honor. But, in any event --

2 THE COURT: I have to use the official
3 transcript that has been provided to me, and that
4 is the one that I will use.

5 DR. FALTAS: And so Your Honor is absolutely
6 correct that at the pretrial hearing I absolutely
7 said I do not want counsel at all, I want to appear
8 *pro se*.

9 And Judge Solomon said, no, based on the State
10 Supreme Court order, I will not let you appear *pro*
11 *se*. So that is in the the non-transcribed, which I
12 have asked several times to be transcribed.

13 In addition, there is a transcript that Judge
14 Manning has given an order for it, and that is the
15 February 21st transcript before Judge Barber. And
16 that was to relieve Mr. Lupton. And Judge Barber
17 asked me, What do you want? Do you want to
18 represent yourself? And I said, Absolutely, as I
19 have an absolute right to do.

20 And how about we do this, Your Honor? Is it
21 possible for the clerk to make a copy for you?

22 THE COURT: I'll take a copy.

23 (Mr. Shaffer hands the Court a copy.)

24 DR. FALTAS: So it will appear that I had
25 requested and preserved the right to

1 self-representation many, many, many times.

2 Now, he says about a speedy trial. Remember,
3 it is back to November 17. So I wasn't -- at that
4 time I wasn't -- in fact, I was pleasant to Judge
5 Hanna and I told her that I liked her. And at that
6 time I did not know what a bad judge she was.

7 And so she said: "Okay, because the
8 prosecution was not ready." They were proceeding
9 under the now-invalidated idea that the prosecutor
10 in Richland called the case. And Your Honor knows
11 from the case of *State v. Langford* --

12 THE COURT REPORTER: I'm sorry, I can't hear
13 you.

14 THE COURT: Let's -- Dr. Faltas, I understand
15 that those all relate to speedy trial motions, so
16 you've indicated that you made those motions and he
17 provided what he says are reasons why they did not
18 go forward in the manner and expedience as you
19 would have liked, and a portion of that had to do
20 with recusal of judges and scheduling.

21 DR. FALTAS: No. But no. But no. No. No.
22 That is not true. There was no recusal issue in
23 November, 2009. There was no recusal. There may
24 have been a recusal issue in March 2010, but they
25 insisted, No, we are not biased. We will try it.

1 Except that they refused to schedule them. And I
2 made the motion again. And in October 2010, Hanna
3 said, I'm denying the motion for speedy trial just
4 because. She didn't even give any reason.
5 Apparently, if she gave a reason at all, her reason
6 for denying the motion for speedy trial was that I
7 had made the motion for speedy trial. Somehow
8 making the motion for a speedy trial is itself a
9 reason to deny the motion. This is totally
10 incongruent. And I have no idea --

11 THE COURT: Let's get to the substantive
12 issues, Dr. Faltas, in terms of the argument about
13 the evidence and the testimony. I think your issue
14 about the speedy trial, we have discussed that.
15 And I understand that you disagreed with that. And
16 it will take me a while to go through all of this
17 and figure out what I need and what I don't need.

18 DR. FALTAS: And, Your Honor, again, I also
19 have where I wrote to the Office of Court
20 Administration. And that was 2011. And they wrote
21 me back saying that it will be scheduled soon, and
22 they weren't scheduled soon.

23 In fact, as late as 2013, they first said
24 we'll schedule them, then they said no, we won't
25 schedule them. And it took the involvement of the

1 Chief Justice who issued her March 7th order saying
2 Judge Solomon has to immediately do a pretrial and
3 give me -- and report every 30 days. Only then did
4 they schedule them.

5 In my opinion, the Chief Justice's 7
6 March 2013 order was after -- after the fact of my
7 having to file federal habeas corpus requesting
8 speedy trial. So that totally, totally factually
9 is not correct.

10 Now, again, yes, there is a lot that Lupton
11 did not do. And that is why I say that it is
12 ineffective assistance.

13 And then Mr. Shaffer handed me the South
14 Carolina Court of Appeals case of *State v. Johnson*.
15 And it says -- 510 S.E.2d 423. And that is from
16 1999.

17 And the part he underlined said: The State
18 nevertheless contends that the Defendant's proper
19 remedy is through the Post-Conviction Relief Act.

20 If the Court unyieldingly insisted that PCR is
21 the only avenue of relief in this case, there is
22 the real threat that the Defendant may remain
23 incarcerated beyond the legal sentence due to the
24 additional time it will take to pursue such remedy.

25 So sometimes ineffective assistance of counsel

1 can be raised on direct appeal when it appears from
2 the record. And here I think he should have more
3 vigorously examined Charlene Crouch. In fact,
4 during the sentencing, I speak out and tell the
5 judge, I even asked Mr. Lupton to ask Ms. Steele,
6 who is the doctor she went to? What medication did
7 she prescribe? She needed to name them.

8 I had asked the counsel who was forced on me
9 to do that examination. And he didn't. And even
10 during the sentencing he said, Yes, I didn't do
11 that examination. I am not going to bring the
12 paper that she had -- had filled the paper as my
13 false accuser of harassment, which asked her
14 whether she needed medical attention or has sought
15 medical attention. She had said, No, no.

16 So here -- so that appears on the record. The
17 ineffectiveness appears on the record. And on
18 direct appeal -- of course, I am not incarcerated,
19 but I have a 20-day sentence which can harm me. I
20 have also been four years having this stress and
21 prevented from --

22 THE COURT: Let's get back to the specific
23 issues.

24 DR. FALTAS: I'm sorry. So the only thing
25 that Mr. Fernandez is correct about is Mr. Lupton

1 didn't do vigorous cross-examination; but that is,
2 you know, part of his ineffectiveness, and there
3 was no way -- in fact, in the other hearings where
4 I have -- and in that other trial, which the jury
5 returned not guilty verdict, in the middle, Judge
6 Solomon asked me, Did you give this information to
7 Mr. Lupton? I said, Yes. I figuratively kissed
8 his feet for him to read it, but he wouldn't. So I
9 was tolerant about that.

10 Now, to Mr. Fernandez's claims that Charlene
11 Crouch and I were on speaking terms, well, of
12 course at one time we were on speaking terms. This
13 story about the fruit basket happened in
14 December 2008, eight, 2008. And Your Honor may
15 remember from one other -- of course you are
16 allowed to take judicial notice -- of the
17 evidentiary hearing that was heard before Your
18 Honor on December 1st, 2009. All this misery was
19 done to me because mother and I bought that
20 adjacent land on March 3rd, 2009.

21 And then Charlene Crouch started shining
22 mirrors through my window so I couldn't sleep. And
23 I sued her in August -- I'm sorry, in September,
24 2009.

25 So for him, for Mr. Fernandez, to stand and

1 say, Oh, they were on friendly terms, in April 2013
2 or even in December of 2009 is total prosecutorial
3 misconduct.

4 And, yes, Mr. Lupton did not object, but he
5 didn't object because he was ineffective. And if I
6 had objected I would have been held in contempt of
7 court. Not only would have, I had been held in
8 contempt of court in the property trial, which was
9 on April 11, 2013. So that was an issue.

10 Now, if they don't transcribe the pretrial
11 hearing, which actually the Chief Justice has
12 ordered --- not ordered the transcript, but ordered
13 that there be a pretrial hearing. And in it I did
14 very specifically raise that I want to represent
15 myself. So even if they don't transcribe it, I can
16 make Your Honor a link, because that is the only
17 way that it can be done.

18 Oh, I'm sorry, I did file the audio that I can
19 submit at which particular minute at which hearing
20 I did raise my right to proceed *pro se*.

21 So what was the other factual issue?

22 THE COURT: I think that was it.

23 DR. FALTAS: Okay. So, yes, I talked to
24 Charlene Crouch in 2008. I sued her in 2009. And
25 in 2011 a man testified in court that she is a

1 prostitute. And so in 2013 Mr. Fernandez had
2 absolutely no ground to say that she had --

3 THE COURT REPORTER: I'm sorry, you need to
4 speak up.

5 DR. FALTAS: Mr. Fernandez had absolutely no
6 ground in April 2013 to say that Charlene Crouch
7 and I were on friendly terms at that time or that
8 we were exchanging stories. In fact, I did not
9 speak to her at all, lest I be accused of --

10 THE COURT: Are you saying that you accused
11 her of being a prostitute?

12 DR. FALTAS: No, ma'am. A man testified that
13 she was a prostitute and that he was giving her
14 money for sex. And actually --

15 THE COURT: I guess I'm failing to understand
16 how that shows that you and her did not have
17 problems, that you and Crouch had problems?

18 DR. FALTAS: He testified during the small
19 claims lawsuit I had brought against Crouch for
20 having gotten into the habit of shining a mirror
21 through my window at night so I do not sleep. And
22 she started doing that in August and September,
23 2009. It did not go to trial until March 2011.
24 And so there was this testimony.

25 And, in fact, in my public record search that

1 I did, that very same man had tried to get a
2 restraining order against Charlene Crouch. And in
3 it he said that she was a prostitute who was
4 banging on his window and requesting money for
5 drugs. And then she had the grand larceny
6 conviction. And he testified in the March 2011
7 hearing that he paid her bond and her restitution
8 in return for the sexual favors.

9 So this is very important factual testimony
10 that Charlene Crouch had a huge dog in the fight in
11 that Charles White, who was a tenant of Dinah
12 Steele, and Dinah Steele has a No Trespassing order
13 against Charlene Crouch going to [REDACTED] Byron
14 Road, but she was waiving it and protecting it so
15 that Charlene Crouch could continue to prostitute
16 herself with Charles White and get money from him
17 all in return for Charlene Crouch falsely
18 testifying against me.

19 THE COURT: And did Mr. Lupton bring out any
20 of those matters during her testimony?

21 DR. FALTAS: He did not bring them, but I had
22 asked him. In addition, we know from the actual
23 record that I gave him, the actual recording and
24 the actual complaints by White against Crouch. And
25 it is on the CD that Lupton burned and filed a copy

1 with the Municipal Court and served a copy on
2 Fernandez.

3 And I also asked about it in the hearing that
4 Your Honor got a copy of. And Lupton said that he
5 did file reciprocal discovery and served it on
6 Fernandez.

7 So this is, you know, ironclad. That material
8 was provided to me, it was provided to the
9 prosecution. For the prosecution to stand up,
10 knowing that the false accuser was a drunken
11 prostitute, and whom I had sued, for him to stand
12 up and say because I had once talked to her in 2008
13 that she has no dog in the fight is prosecutorial
14 misconduct. And I stand by this.

15 THE COURT: All right. Anything else, Dr.
16 Faltas? We are going to take a lunch break. And
17 I'm trying to finish this case, because when we
18 come back the only thing we are going to talk about
19 is the other one. So is there anything else on
20 this case?

21 DR. FALTAS: I don't think so, Your Honor.
22 And -- but Your Honor did not give me clear
23 direction on Number 1, getting the exhibits.

24 Oh, yes, one other thing, if I may. One of
25 the exhibits that were introduced was Dinah

1 Steele's habit of whenever -- in fact, there was a
2 photograph that was introduced into evidence of
3 Dinah Steele and me and some third person standing
4 at the mailbox and doing this movement, Go away, go
5 away, go away, when I was going to get my mailbox.

6 So what had happened -- and I testified that
7 what she was saying, Go away, go away. And I was
8 trying to give her the one sheet of paper. I put
9 it on her arm when she was doing this. So
10 evidently it fell. But I touched her. So -- but
11 before it fell, you know, she instinctively touched
12 her own chest, and that is when they falsely
13 accused me.

14 THE COURT: All right.

15 DR. FALTAS: All of them. So the fact -- and,
16 again, the structural error of my not being allowed
17 to represent myself, that is not stuff that would
18 have done by Dr. Faltas. Had I been representing
19 myself I would have insisted on discovery and I
20 would have done a better cross-examination of
21 everybody in this courtroom like I did when I was
22 falsely accused of harassment.

23 So -- and then the exhibits I have early on
24 asked Mr. Shaffer to get them from Municipal Court.
25 He didn't. I cannot -- my ineffective counsel

1 cannot be imputed to me.

2 THE COURT: So we are going to take a lunch
3 break.

4 Dr. Faltas, do you have the same or similar
5 issues on the property case?

6 DR. FALTAS: I will keep all of them. There
7 is a jury tainting issue. There is a jury tainting
8 issue and the federal constitution issue of
9 non-sovereign. Those are going to be my main
10 arguments.

11 THE COURT: And the second argument is a
12 similar one to the one you made with respect to the
13 assault charges; is that correct? That the
14 municipality is not a sovereign and it doesn't have
15 the authority or the right to be able to enact
16 special statutes or its own statutes?

17 DR. FALTAS: Yes. But also as far as health
18 and safety, I will go a little bit into that.
19 And -- I'm sorry. Thank you very much, Your Honor.

20 The very important issue, which is peculiar to
21 the argument is the *Florida v. Jardines* argument, a
22 US Supreme Court decision, which was part of the
23 transcript. During that trial, I put it in the
24 trial transcript.

25 THE COURT: Well, we are going to take a lunch

1 break. And we are going to come back at 2:30. And
2 I'll hear the arguments as it relates to that
3 particular case. And you have kind of briefly
4 outlined them, and so I'll be prepared to hear that
5 information.

6 DR. FALTAS: Thank you very much, Your Honor.

7 THE COURT: We are down until 2:30.

8 DR. FALTAS: Thank you.

9 MR. SHAFFER: Do I need to be back?

10 THE COURT: I don't particularly need you. I
11 don't know if Dr. Faltas needs you or not.

12 (WHEREUPON, a lunch break was taken at
13 1:33 p.m.)

14 (WHEREUPON, the proceedings resumed at
15 2:39 p.m.)

16 THE COURT: We're going to pick up the 3525
17 case, 13-3525, and talk about the grounds for the
18 appeal in that one.

19 And you were limited to a couple of arguments
20 before we took a lunch break, and so let's pick up
21 there, Dr. Faltas.

22 DR. FALTAS: Thank you very much, Your Honor.
23 And, please, before I do, just a couple of
24 housekeeping matters, if I may?

25 I did ask for Mr. Shaffer to be relieved. And

1 I had also asked to have standby counsel, if for no
2 other reason than the fact that, you know, I'm
3 suffering from physical health issues, and at any
4 time I might become physically unable to pursue my
5 rights. So I was hoping Your Honor would give
6 consideration to appointing standby counsel for me.
7 That was done before. And the understanding is
8 that the standby counsel would step in only if
9 there is a physical issue.

10 THE COURT: And Mr. Shaffer is still here, so
11 I took it that you wanted him to continue on and
12 stay here.

13 DR. FALTAS: Well, actually, I asked him to
14 stay for another reason, but if Your Honor wants to
15 appoint him as standby counsel and if he is
16 willing, I'm not going to say no. I had other
17 ideas, but whatever Your Honor decides.

18 THE COURT: Well, I'm hoping that you will be
19 able to get through the rest of it. So let's see
20 how that goes. And if something were to happen
21 with him sitting here, then we may impress upon --

22 DR. FALTAS: Yes. I think if, God forbid,
23 Your Honor were to rule against me, then there is
24 the next appeal, and if I were physically disabled
25 in between. That is why I would need standby

1 counsel.

2 The other housekeeping matter is that I did
3 file a copy of the CD in one of the cases that does
4 have the different hearings in which I had asserted
5 my right to self-representation. I'd be more than
6 happy to give Your Honor another copy and
7 Mr. Fernandez another copy, so that in case they do
8 not do the transcript quickly enough. But we
9 have -- it is their official recording, not mine.

10 THE COURT: And you indicated that there were
11 transcripts, I mean, that there were other
12 recordings? I think you provided a tape or
13 something?

14 DR. FALTAS: Yes. Yes. Yes, Your Honor. But
15 these are the ones from the recent hearings in
16 Municipal Court. There is one which is missing,
17 which I had been also asking for. I don't even
18 have the audio of that. And that is the July 25,
19 2013, trial of *The State v. Teresa Ingram*, where I
20 was the victim, the proven victim now. And during
21 that hearing -- I alluded earlier -- I presented
22 Judge Solomon with what I filed in Federal Court
23 about the perjury and all the issues that I had.

24 You asked me if I had raised them in the lower
25 court. And my answer was, Yes, I did, on

2009147975
+
2009148266 33

The Supreme Court of South Carolina

Marie Assa'ad-Faltas, Petitioner,

v.

State of South Carolina,
Richland County's Solicitor,
City of Columbia, SC, Richland
County Circuit Courts and
Richland County Magistrates, Respondents.

ORDER

Petitioner has filed documents entitled "Complaint in the Supreme Court's Original Jurisdiction," "Affidavit in Support of Complaint in the Supreme Court's Original Jurisdiction and Petition for Mandamus to Richland County Circuit Court and to the Magistrates of Richland County and in Further Support of Petitioner's Motion to Convert Current Bond to Unconditional Personal Recognizance Bond in K-613792 and K-613793," and "Memorandum in Support of Petition for the Supreme Court to Accept this Matter in its Original Jurisdiction."

Petitioner has also filed a document entitled "Emergency Motion to Allow Petitioner to Return to Her Apartment Until Her Innocence is Proven and to Immediately Return to Her All Her Tangible and Intellectual

Property Confiscated from Her Apartment Under False Pretext of a Search Warrant" and a document entitled "Emergency Petition for Mandamus to Richland County Circuit Court as Alternative to Petitioner's Motion for Immediate Return to Her Apartment." All of the motions are denied. Rule 245(a), SCACR.

Further, petitioner has a history of engaging in vexatious litigation in both the state and federal courts in this state. Routinely, when she does not obtain the relief she seeks in the lower courts, petitioner proceeds directly to this Court with a request for an extraordinary writ instead of following standard judicial procedures. Such frivolous filings constitute an abuse of the judicial process and result in a waste of judicial resources. Accordingly, we hereby direct the Clerk of this Court to refuse to accept further filings from petitioner in which she seeks an extraordinary writ or to invoke this Court's original jurisdiction unless they are signed and filed by an attorney.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

December 23, 2009

2009147975
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2009148266 2

The Supreme Court of South Carolina

Marie Assa'ad-Faltas, Petitioner,

v.

State of South Carolina,
Richland County's Solicitor,
City of Columbia, SC, Richland
County Circuit Courts and
Richland County Magistrates, Respondents.

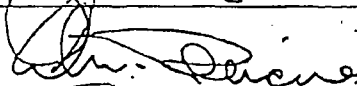
ORDER

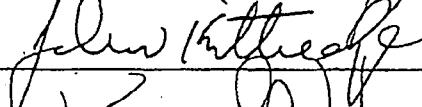
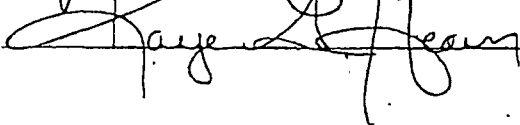
By order of this Court dated December 23, 2009, numerous motions filed by petitioner in this Court's original jurisdiction were denied. See Rule 245(a), SCACR. Further, noting petitioner's history of engaging in vexatious litigation in both the state and federal courts in this state, the order directed the Clerk of this Court to refuse to accept further filings from petitioner in which she seeks an extraordinary writ or to invoke this Court's original jurisdiction unless they are signed and filed by an attorney.

Petitioner has now filed a document entitled "Emergency Motion to the Four Associate Justices of the Supreme Court to Reconsider and Invalidate the Chief Justice's Denial of the Petition and to Order that the Circuit Court Restore on the Calendar of 4 January 2010 Petitioner's Motion

to Suppress her Arrest Warrant and to Challenge the Constitutionality of the Statutes Used to Arrest and Prosecute Her." In addition, petitioner served upon one member of this Court a letter in which she essentially seeks review of the order of December 23, 2009. We have construed the motion and letter as petitions for rehearing. The requests for rehearing are denied, and the order of December 23, 2009 is confirmed. To the extent petitioner seeks additional relief in her emergency motion and letter, we decline to entertain such requests pursuant to the order of December 23, 2009.

IT IS SO ORDERED


C. J.

J.

J.

J.

J.

Columbia, South Carolina

January 6, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

RICHLAND COUNTY
FILED
2010 APR - 1 AM 10:56
CLERK W. M. DUFF
COURT CLERK

IN RE:)

ORDER

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

In recent months, this Court has become acutely aware of the erratic and inappropriate behavior of Marie Assa'ad Faltas, MD, MPH, a criminal Defendant in this Court.

Dr. Faltas is on bond and was indicted on January 14, 2010, for two (2) counts of Harassment 1st Degree. Dr. Faltas intensely believes she is not guilty of these charges. Because Dr. Faltas has chosen to act *pro se* and represent herself, this Court, pursuant to her motion, appointed stand-by counsel, Public Defender Mark Sawyer, to assist Dr. Faltas in procedural matters relating to her defense. Because Dr. Faltas has chosen to represent herself, she also believes she has unfettered access to the Richland County Courthouse, judges, clerks, solicitors and other officers of the Court in relation to her criminal charges.

Because of Dr. Faltas' excessive filing of motions and demands for immediate hearings by court officials (Exhibit A), this Court reluctantly made an exception to the Administrative Order in place for the disposition of criminal cases by assigning her case to a visiting judge and assigning the week of February 22, 2010 for the expedited trial of her cases. The Honorable Clifton Newman conducted the week-long trial which ended in a mistrial at 11:00 PM on Friday, February 26. Within a week of her mistrial, Dr. Faltas resumed filing motions in her criminal case and continued to demand "urgent" hearings.

This Court has conducted numerous interviews with courthouse security personnel, the Fifth Judicial Circuit Solicitor's office, the Clerk of Court's office and my own office staff. I find

that Dr. Faltas is in the Richland County Courthouse on an almost daily basis, that she is insulting and demanding to personnel in the Clerk of Court's office, that she is a constant irritant to the Solicitor's office, that she has been banned from the Solicitor's office for disruptive behavior and has had to be escorted from that office by law enforcement, that she has harassed individual solicitors by following them around the courthouse, that she constantly calls the office of the undersigned to the point that I have had to post her phone numbers on office phones with instructions to my staff not to answer incoming calls from her numbers, that she appears in courtrooms and attempts to have *ex parte* conversations with sitting judges involved in other cases, and that the security forces at the Richland County Courthouse have advised the undersigned that Dr. Faltas is a constant nuisance to the orderly oversight of activity in a very busy courthouse. Even the Public Defender's office has to deal with Dr. Faltas loitering at or near the entrance to that office.

It is fair to say that no other criminal defendant in Richland County has been treated with such consideration as Dr. Faltas. In response, Dr. Faltas has treated this Court and courthouse personnel with rudeness, incivility and constant harassment.

This Court respects the right of every citizen to have access to the courts of this State and the right to petition the government through the judicial process, but the right does not extend to the harassment of court officials, or disruptive behavior within the walls or curtilage of any courthouse. The people's business must be conducted in an orderly and unencumbered manner. Dr. Faltas has created an obstruction to this process.

Now, therefore, by the power vested in me as Chief Administrative Judge for the Fifth Judicial Circuit, and with the consent and support of the Richland County Clerk of Court, the Fifth Judicial Circuit Solicitor's Office, Region 5 of the Richland County Sheriff's Office, MARIE ASSA'AD FALTAS IS HEREBY RESTRICTED FROM ENTERING OR COMING ABOUT THE RICHLAND COUNTY COURTHOUSE OR PERSONS EMPLOYED THEREIN, EXCEPT ONLY FOR SCHEDULED COURT APPEARANCES OR FOR THE PURPOSE OF FILING DOCUMENTS AT THE SECOND FLOOR OFFICES OF THE RICHLAND COUNTY CLERK OF COURT RELATED TO HER NUMEROUS CRIMINAL AND CIVIL CASES BETWEEN THE HOURS OF 2:00 PM TO 4:00 PM. SHE IS FURTHER RESTRAINED FROM MAKING OR ATTEMPTING TO MAKE *EX PARTE* COMMUNICATIONS WITH JUDGES AND THEIR STAFF, SOLICITORS AND THEIR STAFF, OR COURT PERSONNEL OF THE RICHLAND COUNTY CLERK OF COURT'S OFFICE.

AND IT IS SO ORDERED!

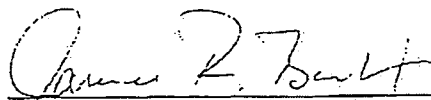


G. THOMAS COOPER, JR.
Administrative Judge for General Sessions
Fifth Judicial Circuit

Columbia, South Carolina

March 31, 2010

I CONCUR:



JAMES R. BARBER
Administrative Judge for Common Pleas
Fifth Judicial Circuit

VIOLATION OF THIS ORDER SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF CONTEMPT OF COURT PUNISHABLE BY FINE OR IMPRISONMENT.

2010168346 ✓

The Supreme Court of South Carolina

State of South Carolina,

v.

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

Defendant,

and

Marie Assa'ad Faltas, MD.,
MPH,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER

Petitioner has filed a pro se document in this Court entitled "Appeals From Administrative Orders And *Extremely Urgent Motion* For Habeas, Mandamus, and Supersedeas And For This Court to Reconsider its Prior Order or To Appoint Counsel To Represent Her on These Narrow Issues of Whether: (1) Her *Physical* Access to Richland County Court Records Should be Limited; and (2) She Should be Required to Undergo Still

a Fourth Mental Evaluation After She Underwent Three and Represented Herself Ably." Therein, petitioner makes numerous allegations regarding her pending criminal charges and the February 2010 trial, including a vague reference to judicial bias, assertions that she does not suffer from mental illness and is capable of representing herself, an allegation that the State should not be allowed to try her again because the first trial was based on the State's knowing procurement and use of false testimony, and an allegation that Judge Cooper refuses to schedule a hearing on petitioner's motions.

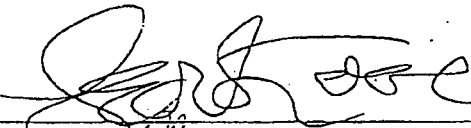
Petitioner also contests the "bizarre order" issued by Judges Cooper and Barber. She contends Judge Cooper should have recused himself, that the judges do not have the authority to limit a litigant's access to the courthouse in the manner set forth in the order, that the order constitutes blatant and inexcusable discrimination, and that it was based on ex parte interviews with the solicitor's office, which is petitioner's adversary.

Finally, petitioner asks this Court to reconsider its order of December 23, 2009, and grant her permission to file a petition for an extraordinary writ in this Court's original jurisdiction without a lawyer. In the alternative, she asks the Court to appoint her counsel to take certain issues "all the way to the U.S. Supreme Court."

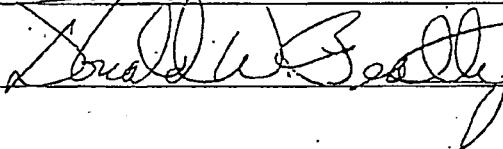
To the extent petitioner is seeking to appeal from the order of Judges Cooper and Barber restricting her access to the Richland County Courthouse, any such appeal is untimely since the order was issued on April 1, 2010. To the extent she is asking this Court to issue an extraordinary writ in its original jurisdiction, such request is in violation of this Court's order of December 23, 2009, since the request was not signed and filed by counsel. Petitioner's request for the Court to reconsider that order is untimely. Regardless, petitioner has failed to present a sufficient reason for this Court to reconsider its order. Indeed, petitioner's latest filing further supports this Court's order. Finally, petitioner's request for the Court to appoint counsel is denied since petitioner has failed to show that she is entitled to appointed counsel.

Therefore, the document filed by petitioner is, as a whole, denied and dismissed.

IT IS SO ORDERED.



C. J.


J.


J.

John Kithred J.
Kaye Leary J.

Columbia, South Carolina

August 20, 2010

The Supreme Court of South Carolina

2011 83826

The City of Columbia,

Respondent,

v.

Marie Assa'ad-Faltas, MD,
MPH,

Appellant.

ORDER

On January 28, 2011, appellant filed a document in the Court of Appeals entitled "Notice of Appeal from the Circuit Court's Unwillingness/Inability to Schedule a Hearing on the Underlying Appeals from Municipal Court or, in the Alternative, Motion for This Court to Directly Hear Those Appeals and Emergency Motion for this Court to Direct Circuit and Municipal Courts to not Incarcerate Appellant Unless and Until this Court Hears Her Appeals." By order dated February 1, 2011, Chief Judge Few stated, "This appeal is dismissed as not immediately appealable. In the alternative, Appellant moves this Court to entertain her appeals, which we decline to do."

Thereafter, appellant filed a document entitled "Timely Petition for Rehearing En Banc of the Honorable Chief Judge's Decision Which has

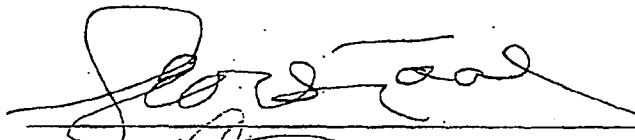
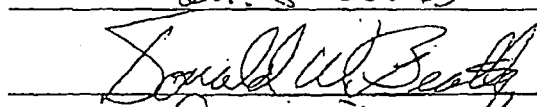
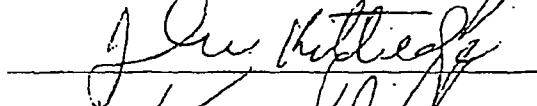
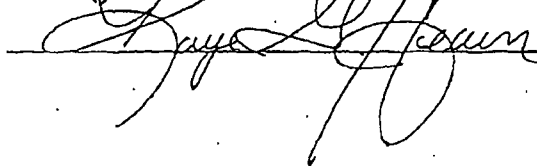
the Effect of Dismissing these Combined Appeals from the Circuit Court's Unwillingness/Inability to Schedule a Hearing on the Underlying Appeals from Municipal Court or, in the Alternative, Motion for this Court to Directly Hear those Appeals Itself or this Court to Direct Circuit and Municipal Courts to Set a Date Certain to Hear Appellant's Cases and her Appeals or Dismiss the Charges Against Her." By order dated March 11, 2011, the appeal was certified to this Court pursuant to Rule 204(b), SCACR.

Since the matter was certified to this Court, appellant has filed documents entitled "Motion for a Briefing Schedule and Order and Emergency Motion for this Court to Direct Circuit and Municipal Courts to not Incarcerate Appellant Unless and Until this Court Hears Her Appeals" and "Extreme Emergency Supplement to Appellant's Emergency Motion for this Court to Protect Her from False Incarceration." The petition, motions and supplement are all denied.

Moreover, due to the frivolous, repetitive and abusive nature of appellant's filings in this Court and other courts in this state, we hereby prohibit appellant from filing anything in the courts of this state in a pro se capacity. Appellant is not precluded from addressing any grievances she may have in the courts of this state, assuming she is represented by counsel and

such grievances are not frivolous. We therefore direct the clerks of court in this state not to accept any filings from appellant unless they have been prepared by an attorney, submitted by the attorney to this Court first for approval, and filed by the attorney. Petitioner is hereby warned that a violation of this order will be grounds for contempt.

IT IS SO ORDERED.

 C. J.
 J.
 J.
 J.
 J.

~ Columbia, South Carolina

April 8, 2011

2012-213223

The Supreme Court of South Carolina

In the Matter of Marie Assa'ad-Faltas.

ORDER

By order dated April 8, 2011, the Supreme Court of South Carolina prohibited Marie Assa'ad-Faltas (Faltas) from making any *pro se* filings with any court of this State. Instead, filings can only be made on her behalf by an attorney. This order also provided that Faltas is "not precluded from addressing any grievances she may have in the courts of this state, *assuming she is represented by counsel and such grievances are not frivolous.*" (emphasis added).

In *Faltas v. Steele*, 2009-CP-40-02219, a case that is pending in the circuit court, Faltas is not represented by an attorney. In an apparent attempt to circumvent the restrictions contained in the order of April 8, 2011, Faltas has sent a series of e-mails to judges and law clerks about the above case. Further, she has contacted the staff of the Supreme Court and the circuit court using the direct telephone numbers of the staff members rather than going through the main, public numbers. Additionally, it has been reported that Faltas may have held up placards during another court proceeding in an attempt to convey her objections.

Based on the disruptive effect that the above conduct has had on the orderly functioning of the courts of this State, I find it appropriate to issue this order under my authority as the administrative head of the South Carolina Unified Judicial System. Effective immediately, Faltas shall not contact any judge, justice, law clerk, clerk of court or any other officer or employee of the Judicial System by telephone, e-mail or any other form of electronic communication. Instead, if it is necessary for Faltas to contact an officer or employee of the Judicial System outside of a scheduled hearing or trial, that contact shall be made in writing and shall be filed with the appropriate clerk of court by an attorney licensed to practice law in South Carolina.

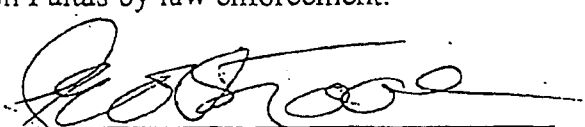
Further, under the order of April 8, 2011, Faltas must be represented by counsel in any case pending before a court of this State in which she is a party. Contrary to the assertions that Faltas has made, the order of April 8, 2011, is applicable not

only to cases filed on or after the date of that order, but also to cases that were pending on the date of that order.

Finally, Faltas shall not hold up placards or otherwise engage in conduct which is disruptive of court proceedings. The trial courts are directed to take immediate corrective action if she engages in disruptive conduct in the future.

Faltas is warned that a violation of the order of April 8, 2011, or of this order, will be treated as contempt. Further, a violation of either of these orders may result in the imposition of sanctions including the dismissal of any action that she has filed or the imposition of additional restrictions on her ability to file actions or documents with the courts of this State.

A copy of this order shall be served on Faltas by law enforcement.


JEAN HOEFER TOAL
CHIEF JUSTICE

Columbia, South Carolina
October 24, 2012

cc: The Honorable James R. Barber, III
The Honorable J. Ernest Kinard, Jr.
The Honorable G. Thomas Cooper, Jr.
The Honorable Alison Renee Lee
The Honorable Clifton Newman
The Honorable George C. James, Jr.
The Honorable Brooks P. Goldsmith
The Honorable W. Jeffrey Young
The Honorable Jeanette W. McBride
Dr. Marie Assa'ad-Faltas
J. Andrew Delaney, Esquire
Robert A. McKenzie, Esquire
Alicé Price Adams, Esquire

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 State of South Carolina,)
)
 Plaintiff,)
 vs.)
)
 Marie Assaad-Faltas,)
)
 Defendant.)

IN THE COURT OF GENERAL
 SESSIONS FIFTH JUDICIAL CIRCUIT

Warrant nos: 388303FK, 37025FK,
 L066971, L066954 & 201310

ORDER

This matter came before the Court on February 21, 2013 on a motion to be relieved of counsel filed by the Defendant's attorney Mr. Theodore N. Lupton. Mr. Lupton informed the Court that the attorney-client relationship has been significantly strained by Ms. Faltas's conduct toward Mr. Lupton and his staff and therefore does not believe that he can represent Ms. Faltas. After careful consideration, the Court denies Mr. Lupton's motion.

The Court does not foresee appointing another attorney to represent the above listed defendant as an effective resolution to this motion and knows of no other attorney who could represent Ms. Faltas more adeptly. The Court takes note of Mr. Lupton's concern and emphasizes that he is not required to do anything contrary to his ethics or professional judgment in his representation of Ms. Faltas.

Additionally, the Court places certain restrictions on the manner in which Ms. Faltas may contact and communicate with Mr. Lupton. Ms. Faltas may only contact Mr. Lupton regarding matters directly related to his representation of her on the above captioned charges. Any communication originated by Ms. Faltas must be in writing or by email to his office address only. Ms. Faltas must allow Mr. Lupton sufficient time to respond to her communications and must respect the fact that Mr. Lupton has other clients to whom he must devote significant time and attention. Ms. Faltas may only contact Mr. Lupton at his office and must not contact or

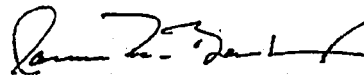
FILED
 RICHLAND COUNTY
 2013 FEB - 26 PM 3:54
 JAMES E. MCBRIDE
 CLERK
 S.C.P. & G.S.

attempt to contact Mr. Lupton's other clients or any figure from his personal life, including his family members. Excessive, disruptive or harassing communication with Mr. Lupton by Ms. Faltas is not permitted. Any violation of this Order will result in appropriate sanctions.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that attorney Mr. Theodore N. Lupton's appointment as counsel will remain counsel in matters related to the above captioned charges against Marie Assaad-Faltas.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, and DECREED that Ms. Faltas may only contact Mr. Lupton regarding matters directly related to his representation of her on the above captioned charges, must limit such contact to writing and email his office address only, and must allow Mr. Lupton sufficient time and space to respond to her communications and to serve his other clients. Ms. Faltas may only contact Mr. Lupton at his office and must not contact or attempt to contact Mr. Lupton's other clients or any figure from his personal life, including his family members. Excessive, disruptive or harassing communication with Mr. Lupton by Ms. Faltas is not permitted. Any violation of this Order will result in appropriate sanctions.

AND IT IS SO ORDERED.



The Honorable James R. Barber, III
Fifth Judicial Circuit

Columbia, South Carolina
3/7, 2013

The Supreme Court of South Carolina

In the Matter of Marie Assa'ad-Faltas, Respondent.

Appellate Case No. 2013-000862

ORDER

This matter is before this Court to determine if a rule to show cause for contempt should be issued against respondent. Various affidavits have been filed with this Court. While this Court declines to issue a rule to show cause at this time, it has decided to issue this order, and to warn respondent that any violation of the restrictions contained in this order will be treated as a contempt of this Court.

By order dated December 23, 2009, this Court imposed the first restriction on filings by respondent. This order, which found that respondent "has a history of engaging in vexatious litigation in both state and federal courts" and that her "frivolous filings constitute an abuse of the judicial process and result in a waste of judicial resources," prohibited the Clerk of this Court from accepting any "further filings from [respondent] seeking an extraordinary writ or to invoke the original jurisdiction of this Court unless the filing is signed and filed by an attorney." By order dated January 6, 2010, this Court denied a petition for rehearing regarding the order of December 23, 2009.

By order dated March 31, 2010, the Chief Judges for Administrative Purposes in Richland County, Judges G. Thomas Cooper, Jr., and James R. Barber, found it necessary to restrict respondent's access to the Richland County Courthouse. This order indicates that respondent has been "insulting and demanding" to court personnel, had been banned from the Circuit Solicitor's office for disruptive behavior, "has harassed individual solicitors by following them around the courthouse," "has treated the [circuit court] and courthouse personnel with rudeness, incivility and constant harassment," and has entered courtrooms in an attempt to engage in *ex parte* conversations with judges. This order restricted

respondent from entering the courthouse except for scheduled court appearances, or to file documents from 2:00 to 4:00 p.m. each day. The order also prohibited her from making or attempting to make *ex parte* communications with judges, their staff and court personnel in the clerk's office.

Respondent sought review of the order of Judges Cooper and Barber, and sought habeas corpus and other extraordinary relief from this Court. She also asked for reconsideration of this Court's order of December 23, 2009, which required her to have an attorney to seek any extraordinary writ from this Court. By order dated August 20, 2010, this Court denied all relief, noting that respondent's "latest filing further supports this Court's order" requiring her to have an attorney to seek extraordinary relief from this Court.

In January 2011, respondent sent this Court a document regarding a criminal case unrelated to her. Respondent indicated that she had heard the arguments in this case and wanted to suggest answers to some of the issues discussed during oral argument. By order dated February 3, 2011, this Court refused to allow her to do so and noted that her "attempt to 'weigh in' on a decision in the [criminal case] is prohibited by the rules of this Court, is completely inappropriate, and quite frankly, shocking."

In that same order, this Court noted respondent has "on several occasions approached a member of this Court while the member was engaged in purely personal activities unrelated to any official duties." Finding this conduct was "prohibited by the rules of this Court and completely inappropriate," this Court prohibited respondent "from directly contacting any member of the Court." This included, but was not limited to "contact made in person, by phone or in writing." Respondent was warned that a violation of this order would be treated as contempt. This Court denied her petition for reconsideration of the February 3, 2011, order.

In January 2011, respondent filed a notice of appeal from the circuit court. The South Carolina Court of Appeals dismissed the appeal finding that the matter was not immediately appealable. After a petition for rehearing *en banc* was filed with the Court of Appeals, the appeal was transferred to this Court. Respondent also filed various other motions.

By order dated April 8, 2011, this Court denied the petition for rehearing and the other motions. In addition, based on "the frivolous, repetitive and abusive nature of [respondent's] filings in this Court and other courts of this state," this Court prohibited respondent "from filing anything in the courts of this state in a *pro se*

capacity." Instead, respondent was advised that she "is not precluded from addressing any grievances she may have in the courts of this state, assuming she is represented by counsel and such grievances are not frivolous." This order warned her that a violation of the order could result in her being held in contempt.

Finally, on [October 24, 2012], Chief Justice Toal issued an order directed at several means by which respondent had attempted to circumvent the requirement that she have a lawyer for all court filings and proceedings. This included sending e-mails to judges and law clerks, contacting judicial staff members on their direct phones, and holding placards in court proceedings in an attempt to convey her objections. Among other things, this order specifically prohibited respondent from contacting "any judge, justice, law clerk, clerk of court or any other officer or employee of the Judicial System by telephone, e-mail or any other form of electronic communication. Instead, if it is necessary for [respondent] to contact an officer or employee of the Judicial System outside a scheduled hearing or trial, that contact shall be made in writing and shall be filed with the appropriate clerk of court by an attorney licensed to practice law in South Carolina." This order warned respondent that a violation would be treated as contempt.

Since the issuance of the October 24, 2012, order, respondent has sent various e-mails to justices, judges and law clerks. Based on the affidavits filed with this Court, there is probable cause to believe that respondent sent the following e-mails in violation of the order of the Chief Justice:

(1) An e-mail which shows that it was sent on February 20, 2013. This e-mail has the subject listed as "I am a, if not a repretative [sic] of the, most central stake-holder in speedy criminal trials: the falsely-accused criminal defendant." This e-mail was sent to Chief Justice Toal.

(2) An e-mail which shows that it was sent on April 19, 2013. This e-mail has the subject listed as "Response to Administrative Matters and court integrity issues SC's Chief Justice requested be directed to her office." This e-mail was sent to Chief Justice Toal; Circuit Court Judge George C. James, Jr.; Municipal Court Judge Carl L. Solomon; and Susanna Brailsford, the law clerk for Circuit Court Judge James R. Barber, III.

(3) An e-mail which shows that it was sent on April 22, 2013. This e-mail has the subject listed as "RE: Please bring to SC's Supreme Court's attention that an incompetent lawyer is forced on me and now he wants to practice medicine without a license on me." This e-mail was sent to Judge

Solomon, Ms. Brailsford and Ms. Karen Huelson, a law clerk to Justice Donald W. Beatty.

(4) An e-mail which shows that it was sent on April 23, 2013. This e-mail has the subject listed as "Immediate request for Mr. Lupton to be relieved. I do NOT need other counsel." This e-mail was sent to Judge Solomon and Ms. Brailsford.¹

(5) An e-mail which shows that it was sent on May 4, 2013. This e-mail has the subject listed as "Mr. Lupton has no right to prohibit me from e-mailing him or to abandon my cases now." This e-mail was sent to Chief Justice Toal and Ms. Brailsford.

Further, there is probable cause to believe that respondent has violated this Court's order of February 3, 2011, prohibiting any direct contact with a member of this Court by sending the e-mails of February 20, 2013, April 19, 2013, and May 4, 2013, to Chief Justice Toal.

While this Court could issue a rule to show cause for contempt to adjudicate these matters, this Court declines to do so at this time. Instead, this Court issues this order and places the following restrictions on respondent regarding her filings and contacts with the Unified Judicial System in South Carolina:

(1) Respondent may not represent herself *pro se* in any court of this state. Instead, she must be represented by counsel before any court of this state. Respondent is advised that she is not precluded from addressing any grievances she may have in the courts of this State, assuming that she is represented by counsel and such grievances are not frivolous. Except as provided in (3) below, no clerk of court shall accept any filing from or on behalf of petitioner unless it is signed and filed by an attorney licensed to practice law in this state.

(2) Respondent may not contact any judge, justice, law clerk, clerk of court or any other officer or employee of the Unified Judicial System in person, in writing or by mail, telephone, fax, e-mail or any other form of

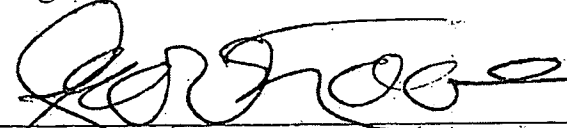
¹ The e-mail of April 23 indicates that a copy was also sent to "Toal, Jean" and "Huelson, Karen", but a copy of this e-mail was apparently not received by either Chief Justice Toal or Ms. Huelson.

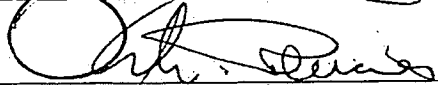
electronic communication. Instead, if it is necessary for respondent to contact an officer or employee of the Judicial System outside a scheduled hearing or trial, that contact shall be made in writing and shall be filed with the appropriate clerk of court by an attorney licensed to practice law in South Carolina.

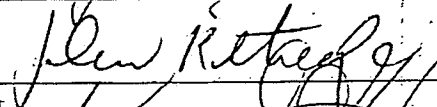
(3) As an exception to the restrictions above, respondent may file a written *pro se* motion to either appoint counsel or relieve counsel with the appropriate clerk of court as long as she has good cause to make the motion. Nothing in this order shall be construed as preventing a court of this state from imposing restrictions on respondent's ability to make a motion to either appoint or relieve counsel if she repeatedly files such motions without good cause.

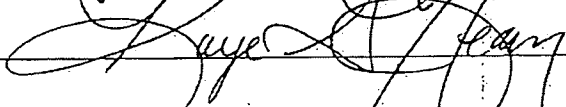
This order does not affect any orders that may have been issued by the lower courts relating to respondent, including the order of March 31, 2010, issued by Judges Cooper and Barber. Further, nothing in this order shall be construed as preventing a lower court from placing such additional restrictions on respondent as that court may determine are appropriate.

Respondent's pattern of frivolous filings and inappropriate conduct toward the courts, its officers and employees has required restrictions to be placed on respondent's access to the courts. Further, this Court has had to continually increase the restrictions to curb respondent's inappropriate conduct. Respondent is warned that a violation of the restrictions contained in this order will result in contempt proceedings being initiated against her.


C.J.


J.


J.


J.

Beatty, J., not participating

Columbia, South Carolina
June 28, 2013

CC: Dr. Marie Assa'd Faltas
The Honorable Alan MCrory Wilson
Salley W. Elliott, Esquire
David Amando Fernandez, Esquire
The Honorable Jeanette W. McBride
The Honorable George C. James, Jr.
The Honorable Carl L. Solomon
The Honorable James R. Barber, III
The Honorable G. Thomas Cooper, Jr.
The Honorable J. Ernest Kinard, Jr.
The Honorable Alison Renee Lee
The Honorable Clifton Newman
The Honorable Brooks P. Goldsmith
The Honorable W. Jeffrey Young
The Honorable Dana Davis Turner
The Honorable Donald Jeffrey Simons
Orin Gal Briggs, Esquire
Theodore Nichols Lupton, Esquire
J. Andrew Delaney, Esquire
Robert A. McKenzie, Esquire
Alice Price Adams, Esquire
The Honorable L. Casey Manning

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

THE CITY OF COLUMBIA,

Plaintiff-Respondent,

vs.

MARIE FALTAS,

Defendant-Appellant.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT) Case No.: 2013-CP-40-3525; 2013-CP-40-3522) ORDER DENYING DEFENDANT-
) APPELLANT'S REQUEST TO PROCEED
) *PRO SE*RICHLAND COUNTY
FILED
2013 JUL -3 AM 9:35
JEANETTE W. MCBRIDE
C.C.P. & G.S.

This matter comes to me by way of Defendant-Appellant's *ex parte* request to proceed *pro se* on the above referenced matters. Defendant-Appellant's counsel has spoken to the court and advocated for her right to self-representation. After careful consideration, the Court denies this request.

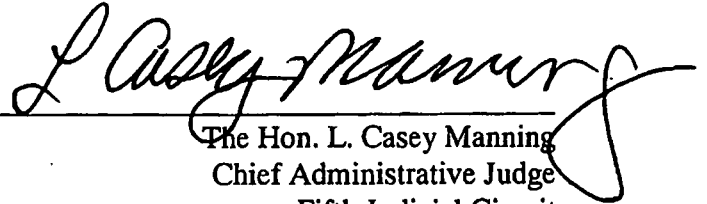
Counsel has zealously argued that Defendant-Appellant (Faltas) has the right to self-representation pursuant to *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525 (1975). However the right to self-representation is not absolute. See *State v. Starnes*, 388 S.C. 590, 600, 698 S.E.2d 604, 610 (2010); cf., *Indiana v. Edwards*, 544 U.S. 164, 128 S.Ct. 2379 (2008) (holding a Defendant may be competent to stand trial, but not competent enough to waive her Sixth Amendment right to counsel). Additionally, a court may terminate a defendant's right to self-representation who "deliberately engages in serious and obstructionist misconduct." See *Faretta*, 422 U.S. at 834-25 (footnote 46).

By orders date April 8, 2011 and October 24, 2012, the Supreme Court of South Carolina has required that Faltas be represented by counsel for all matters in the courts of this State. I am bound by the Orders of the Supreme Court of South Carolina. Therefore, based on the South

SCANNED

Carolina Supreme Court's Orders dated April 8, 2011 and October 24, 2012, Defendant-Appellant's request to proceed with her appeal *pro se* is hereby DENIED.

AND IT IS SO ORDERED.



The Hon. L. Casey Manning
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

Dated: June 28, 2013

The Supreme Court of South Carolina

In the Matter of Marie Assa'ad-Faltas, Respondent.

Appellate Case No. 2013-000862

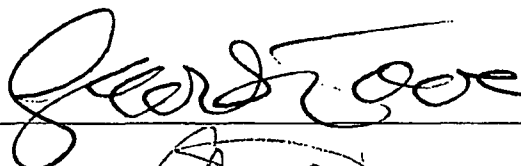
ORDER

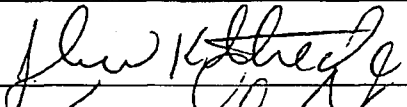
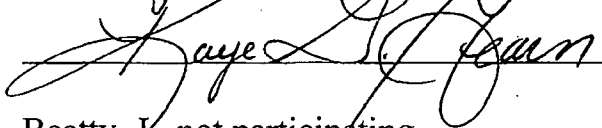
By order dated June 28, 2013, this Court placed restrictions on respondent's filings and contacts with the Unified Judicial System in South Carolina. One of the restrictions is that respondent "may not represent herself pro se in any court of this state. Instead, she must be represented by counsel before any court of this state."

Thereafter, respondent requested we appoint counsel to represent her in filing a petition for reconsideration of the Court's order. By order dated July 22, 2013, signed by the Chief Justice on behalf of the full Court, Tristan Shaffer was appointed to represent respondent. However, on August 2, 2013, respondent filed a pro se motion asking the Court to relieve Mr. Shaffer as counsel. Respondent has filed three supplements to the motion.

Meanwhile, Mr. Shaffer filed a petition for rehearing in which he argues the Court's order prohibiting respondent from representing herself violates *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).

The motion to relieve Mr. Shaffer as counsel is denied. However, we grant the petition for rehearing and hereby modify our prior order to prohibit respondent from proceeding pro se in any **civil** action in any court of this state unless represented by counsel. Respondent may proceed pro se in **criminal** actions in which she is a defendant. However, respondent is reminded that her right to proceed pro se in a criminal action is not absolute and may be forfeited, on a case-by-case basis, and at the discretion of the court before which respondent is appearing, if respondent is unable or unwilling to abide by the rules of procedure and courtroom protocol. *McKaskle v. Wiggins*, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984); *Faretta, supra*.


C.J.

J.

J.

J.
Beatty, J., not participating

Columbia, South Carolina

November 7, 2013

cc:

Alan McCrory Wilson
Salley W. Elliott
David Amado Fernandez
Tristan Michael Shaffer
Jeanette W. McBride
George C. James, Jr.
Carl L. Solomon
James R. Barber, III
G. Thomas Cooper, Jr.
J. Ernest Kinard, Jr.
Alison Renee Lee
Clifton Newman
Brooks P. Goldsmith
W. Jeffrey Young
Dana Davis Turner
Donald Jeffrey Simons
L. Casey Manning
Orin Gail Briggs
Theodore Nichols Lupton
John Andrew Delaney
Robert A. McKenzie
Alice Price Adams

The Supreme Court of South Carolina

In the Matter of Marie Assa'ad-Faltas, Respondent.

Appellate Case No. 2013-000862

ORDER

On June 28, 2013, this Court filed an order declining to issue a rule to show cause for contempt against respondent. In that order, this Court detailed respondent's long history of vexatious filings and inappropriate conduct toward the courts of this State, its officers and employees. Further, this order placed restrictions on respondent's ability to appear *pro se* and make *pro se* filings, and on her ability to contact judges and other court personnel. Many of these restrictions were simply restatements of restrictions previously imposed on respondent by this Court or its Chief Justice. On rehearing, this Court issued an order on November 7, 2013, which relaxed the restrictions to allow respondent to appear *pro se* in a criminal case in which she is the defendant.

Respondent has now filed a motion for clarification. While we deny her motion, we do clarify our prior orders of June 28, 2013, and November 7, 2013, by restating the restrictions that apply to respondent as follows:

- (1) Except as otherwise provided in this order, respondent may not represent herself *pro se* in any court of this State. Instead, she must be represented by counsel before any court of this State. Respondent is advised that she is not precluded from addressing any grievances she may have in the courts of this State, assuming that she is represented by an attorney licensed to practice law in South Carolina and such grievances are not frivolous.
- (2) Except as otherwise provided in this order, respondent shall not make any *pro se* filings with any court of this State, and no clerk of court shall

accept any filing from or on behalf of respondent unless it is signed and filed by an attorney licensed to practice law in South Carolina.

(3) Except as otherwise provided in this order, respondent may not contact any judge, justice, law clerk, clerk of court or any other officer or employee of the Unified Judicial System in person, in writing or by mail, telephone, fax, e-mail or any other form of electronic communication. Instead, if it is necessary for respondent to contact an officer or employee of the Judicial System outside a scheduled hearing or trial, that contact shall be made in writing and shall be filed with the appropriate clerk of court by an attorney licensed to practice law in South Carolina.

(4) Respondent may file a written *pro se* motion to either appoint counsel or relieve counsel with the appropriate clerk of court as long as she has good cause to make the motion. Nothing in this order shall be construed as preventing a court of this State from imposing restrictions on respondent's ability to make a motion to either appoint or relieve counsel if she repeatedly files such motions without good cause.

(5) Respondent may appear *pro se* in a criminal case in which she is a defendant if the trial court determines that she has made a knowing and intelligent waiver of the right to counsel after being warned of the dangers and disadvantages of proceeding without counsel. If allowed to proceed *pro se* by the trial court, respondent may file *pro se* documents with the clerk of the trial court, and may serve and file a notice of appeal from the trial court to the appropriate appellate court. In light of her prior conduct and the fact that there is no right to appear *pro se* in appellate proceedings,¹ respondent's ability to proceed *pro se* shall end with the service and filing of the notice of appeal, and she shall be represented by counsel in the appeal (including any subsequent appeal to a higher court and any discretionary review under Rule 242 of the South Carolina Appellate Court Rules). Respondent is reminded that her 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 if she is unable or unwilling to abide by the rules of procedure and courtroom protocol. *McKaskle v. Wiggins*, 465 U.S. 168, 104 S.Ct. 944, 79 L.E.2d 122 (1984); *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.E.2d 562 (1975).

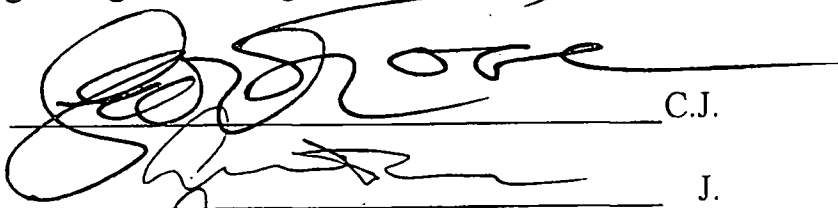
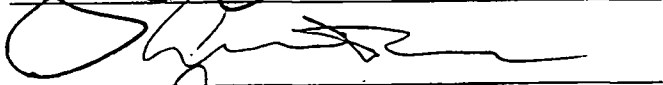
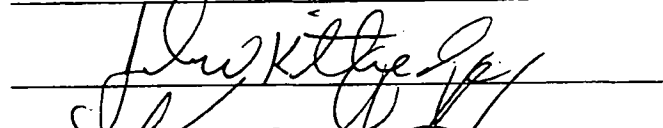
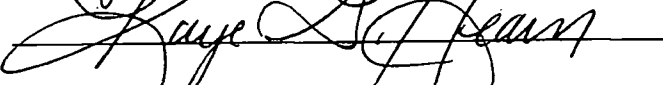
¹ *State v. Roberts*, 364 S.C. 583, 614 S.E.2d 626 (2005).

(6) If a *pro se* filing with a clerk of court is permitted under either (4) or (5) above, that filing shall be made in writing and shall either be hand-delivered or mailed in the United States Mail to the clerk of court.

Respondent shall not send filings to the clerk of court by fax, e-mail or any other form of electronic communication.

Neither this order nor the order of November 7, 2013, shall have any impact on actions previously taken under this Court's order of June 28, 2013, or the earlier orders of this Court or its Chief Justice referenced in that order. Further, nothing in this order shall be construed as precluding the lower courts from placing additional restrictions on respondent if she engages in frivolous, disruptive or inappropriate conduct or filings.

Respondent is warned that a violation of the restrictions contained in this order may result in contempt proceedings being initiated against her.

 C.J.
 J.
 J.
 J.
 Beatty, J., not participating.

Columbia, South Carolina
 January 30, 2014

cc: Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire
David Amado Fernandez, Esquire
The Honorable Jeanette W. McBride
George C. James, Jr., Esquire
Carl L. Solomon, Esquire
The Honorable James R. Barber, III
The Honorable G. Thomas Cooper, Jr.
The Honorable J. Ernest Kinard, Jr.
The Honorable Alison Renee Lee
The Honorable Clifton Newman
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W. Jeffrey Young, Esquire
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Donald Jeffrey Simons
The Honorable L. Casey Manning
Orin Gail Briggs, Esquire
Theodore Nichols Lupton, Esquire
John Andrew Delaney, Esquire
Robert A. McKenzie, Esquire
Alice Price Adams, Esquire
Ms. Marie Assa'ad Faltas

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT **3522**

City of Columbia,

DOCKET NO.: 2013-CP-40-**3522**

Respondent,

v.

ORDER

Marié Therese Assa'ad-Faltas,

Appellant.

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. Marié 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. Schaffer and proceed *pro se*. Mr. Schaffer 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 (Cl. App. 2004) (citing *City of Landrum v. Sarratt*, 352 S.C. 139, 141, 572 S.E.2d 476, 477 (Cl. 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 (Cl. 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.

GROUND 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 Council, 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

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

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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*

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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

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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.

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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

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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. Pitman*, 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.

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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
Presiding Judge

April 17, 2015
Columbia, South Carolina

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 16th, 2016

A handwritten signature in black ink, appearing to read "John H. Strom", is written over a horizontal line.

John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT