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S.C. SUPREME COURT

BEFORE THE SUPREME COURT OF SOUTH CAROLINA

Appellate Case No. 2015-000941

APPEAL from RICHLAND COUNTY Court of Common Pleas

Alison Renée Lee, Circuit Court Judge
Circuit Court Case No. 2013-CP-40-03522

City of Columbia, South Carolina, *Respondent,*

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

Appellant's Third Motion and Brief to Relieve Attorney John Strom as Counsel for Cause AND Strike Everything He Filed in Appellant's Name EVEN IF IT MEANS DISMISSING THIS APPEAL

The absolute pacifist Marie Assa'ad-Faltas, MD, MPH ("Marie") lost hope that this system will timely admit its errors. So, she will sacrifice this appeal, if she must, to convince this Court and the system it represents that oppression has built-in harm to the oppressor even as it harms the oppressed. This document, delayed by other obligations on Marie, is now mandated by: (1) knowledge that: (a) this appeal is already submitted without oral argument and (b) Marie's false accuser's (Dinah Gail Steele) consort's (Larry Wayne Mason) firstborn son (Richard Wayne Mason) died of a "gunshot wound to the head" in April 2016 *exactly* as had his stepmother (Ella Faye Kizer Mason) in May 1993 (both events reported by Larry but dismissed *without investigation* as suicides); and (2) martyrdom of twenty-seven Coptic Orthodox Christians by explosives during Sunday mass in Cairo on 11 December 2016 *because* enough non-Copts falsely associate the Coptic Orthodox Church with crusaders for the non-Copts to exact on the guiltless Copts all manner of vengeance for colonial and neocolonial oppression.

This Court's attacks on Marie for having *pro se* defeated false criminal charges against her tells this Court's "officers" that (a) truth matters not, only winning does, and (b) Marie's life (destroyed by false criminal charges against her) matters not. Similarly, colonial/neocolonial powers told the natives of all countries targeted for colonization that their lives (destroyed by false dogma of inferior colonies needing colonizers to "bring democracy" "knowledge" "and order" to them *by the sword*) do not matter.

But the idea-pushing sword always fails its wielder as the real power of an idea is its truth; and the very use of a sword to push an idea proves its falsity. A non-pacifist oppressed retorts to the oppressor "if my life does not matter, why does yours?" The sword cannot stab contented submission *into* the militarily-vanquished, it only stabs *out of them* all hope of mental sanity in life. The oppressor's child learns that power matters more than life. The suicide epidemic in recent U.S. war veterans and the contemporaneous epidemic of terrorist suicide attacks are fruits of the same poison idea tree: the power to take a life, one's own or others', is more important than life itself. This Court tried to stab into Marie the idea that she is genetically "frivolous" and needful of some genetically superior American lawyer to speak for her.² Any idea that Marie's *pro se* advocacy is "frivolous" has less truth than Iraq's non-existent "weapons of mass destruction" necessitating the war. "Take the oil." "Take Marie's land," hoped Larry Mason.

But Marie was told by her late father to always remember who she is; and she never forgot. Marie's father also taught her: "they cannot make us lie even if they cut our heads off.³ **So, Marie's absolute pacifism is not cowardice or passivity but courage to speak truth to power** and to ask this Court: **all this false branding of me as frivolous against all objective evidence is for what? So that Larry Mason can save money that would have gone to reroute Dinah Steele's sewer lines away from Mother's and my land and give it to his sons to drink themselves into a suicidal depression? (Vide supra et infra.)**

In Coptic Orthodox churches, females and children sit in separate pews from the males; and female pews are closer to the entrance to avoid females crossing the male pews and distracting them from prayer. The explosives hit the females-and-children section which is closest to the entrance, a male deacon was also martyred. The priest self-reported immediately taking the Host and running with it out of the church. But

1 Relevant death certificates and news-paper reports are attached. Richard Wayne Mason appears to have had no education or occupation; but had been repeatedly arrested for DUI and had his cases thrown under suspicious circumstances. The face of Richard's death certificate betrays suspicious thwarting of the rules of mandatory autopsies in death from unnatural causes; *e.g.*, the time of injury and time of death are the, to the minute, *suggesting both were observed and timed* by Larry. Why did Larry not stop Richard's suicide that very minute?

2 It did so by the guns of supposed "law enforcement" ordered to falsely arrest Marie repeatedly and watch lest she dare speak for herself.

3 Please contrast that with Bill Clinton's lies about "that woman, Miss Lewinski," John Edwards' denial of his paternity of Frances Quinn, *etc.* Hillary had to reap what she stood by and saw Bill and John sow.

the rest of the male faithful, after aiding in rescue and recovery, went to the street and recited the complete Orthodox version of the Nicene Creed. They had just seen and heard the explosives and knew themselves vulnerable to more attacks; but the Creed had to be recited. **A Coptic rescuer was videographed asking the unknown attackers: "What did you gain from this?"** Marie cannot claim to have suffered the pain of a man who saw his two daughters literally blown to pieces; but she is sure that the same total indifference to her life, reputation and property (tangible and intellectual) she saw in the eyes and heard in the voices of her prosecutors, judges, and forced lawyers, the same lust for power derived from lying about her she saw in the eyes and heard in the voices of her false accusers, was in the hearts and minds of those who planned or executed the attack on the church and thereafter filled the social media with false claims that the Copts deserved it. **Nor does Marie equate the below recitation of the lies about her with the Nicene Creed.** She is only shamed by the courage to recite it in the Cairo street, come what may, into having the courage to say that this reveling in the power to tell lies must stop because it may earn money but forfeits the soul.

I. Attorney Strom must be relieved because (1) he failed to correct the lies in the City's brief.

A. One of the City's brief's three big lies is sadly copied from Attorney Strom's brief which Appellant fruitlessly besought him to correct: *"While handing Steele the documents, Appellant pushed them into Steele's chest."* City's Brief p 6; *"While attempting to hand Steele the documents, Dr. Faltas 'pushed' them into Steele's chest."* Appellant's brief p 6. Neither Dr. Faltas nor her false accusers testified that she "pushed" papers (in the plural) into Steele's chest. Steele testified it was one sheet, though she gave mutually contradictory and physically impossible versions of what Dr. Faltas did with it. But Dr. Faltas' testimony was clear: Trial tr. pp 64-6 and 72-3:

[25 – page 65, line 2] **Q.** (by Mr. Lupton) And you are saying the relevance of that is that the hand motion that Ms. Steele was making is consistent with the hand motion she was making on September 11th?

[3-11] **A.** Absolutely. "Go away, go away." So while she had her hand there I put the paper -- **one sheet, one sheet** -- like that on her extended hand when she was saying go away, go away. I just put it on her and instinctively even though she didn't want it, when people you know, see something about to fall she did that. That is all that happened. And then after that she realized that, you know, she took momentary control of it so she put her hand out and the paper fell on the floor. I said it doesn't matter, you got it. And I went to my 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.

[16-17] **Q.** Well, the paper physically. You touched the paper to her physically. The paper you said you laid on her arm so you created -

[18-19] **A.** And she was the one who was extending her arm. I didn't like seek out her arm or anything.

[20-22] **Q.** But you took the paper and used the paper. The paper touched her physically, is that -- you placed it and not in any kind of violent way but you are saying you placed it on her arm.

[23] **A.** Yes.

[24 – page 66, line 1] **Q.** And your reason for wanting to place it physically upon her was because you believe that that was required to have effective service? Is that your testimony?

[2-5] **A.** Yes. And these are two more pictures. I think one of them -- **these are defendant's exhibit 10 and 11 and they are taken** -- one of them is the bigger one but this is how she does it. "Go a way, go 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.

[8-9] **Q.** But it's admitted to show or used in this testimony to show her habit and her --

[10] **A.** Yes.

[11] **Q.** And that it was consistent with the picture?

[12] **A.** Yes.

[13-14] **Q.** So the picture is consistent with how she was -- her arm movement on the day in question?

[15-19] **A.** On the day in question and every time she's there and I'm trying to go to my mailbox or, you know, anything. This kind of movement. And to show you how strong this woman is, that day -- * * * * *

[page 72, line 2] **Q.** (by Mr. Lupton) Now did you violently strike or slam ---

[3-4] **A.** Why would I do that? **I did not do it and why would I do it? That would tear the paper I was trying to put ---**

[5-6] **Q.** (by Mr. Lupton) Which is my next question. What was your purpose in going over towards Ms. Steele?

[7-13] **A.** [7-10] To give her the letter in a manner that she cannot deny so that they don't come on the 14th in my absence and enter my apartment and steal from it and photograph it because they had sent me certified letters saying we will come in and photograph it. [11-13] And if I remember correctly, I had even tried to get an injunction from the magistrate and it didn't work. I think I went to the -- tried to go to the state Supreme Court --

[14-14] **Q.** With regards to September 11[,] [d]id you do more than serve what a process server as you might see on T.V. would do? The putting it on them and saying you've been served? Did you do anything more violent than that?

[15-21] **A.** I didn't do anything violent. And I had been previously served by process servers and I had also in the course of other litigation been told that personal service means putting it in their hand. So that's all I did.

[23-24] **Q.** What you did was consistent with what you have seen in service of process?

[25 - page 73, line 12] **A.** Yes, several times. And she was verbally abusing me all the time.

Appeals are not to decide contested facts; but there is no reason for *Appellant's forced counsel* to recite **fictional** facts *contrary to Appellant's interests and contrary to uncontroverted testimony.*

B. Failure to Correct the City's False Pretense that Appellant Never Sought to Proceed pro se AT TRIAL.

"The words *pro se* do not appear anywhere in the transcript," reads the City's brief at page 9. **But the words "represent yourself," "represent myself," "speak for myself" appear often in the trial and pre-trial hearings transcripts; e.g.** 21 February 2013 hearing before Judge Barber, pp 14-15 and 25:

[18-19] **THE COURT:** What is it you want? **You want to represent yourself?**

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

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

[page 15, lines 2-6] **THE COURT:** I'm just -- I want to know what you want. **I mean, my personal opinion is I -- I tend to agree with you, you have a constitutional right to represent yourself in a criminal matter so long as you understand the ramifications of doing so.** * * * * *

[page 25, lines 8-9] **THE COURT:** Ask him [...] to send you a letter saying that that discovery does not exist.

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

[18-20] **THE COURT:** Everybody's entitled to their opinion[. ...] if you will follow up with Mr. Fernandez.

Transcript of 10 April 2013 pre-trial hearing before Columbia Municipal Court Judge Solomon:

[page 1, lines 4-7] **The Court:** Well, I don't know what we are going to need them. We are not having the trial today. I don't know if it's involved in any motions to be heard; but if it is, your lawyers will be happy to assist you.

[8-10] **Defendant Faltas:** Why does everyone make decisions for me? I'm sixty years old. I have two graduate degrees, I speak four languages.

[11-12] **The Court:** I did not make a decision for you. I'm trying to get the hearing started, Dr. Faltas.

[page 17, lines 15-23] **Defendant Faltas:** And there is no reason to bring the jury in tomorrow only to send them home. This is something that we can work today. Besides I had never consented to have the unlawful acts on 4-11 before the others. **Again, everybody is buying and selling me;** and I'm sorry, Your Honor, my knee got worse since the last time I was before you. **Everybody is buying and selling me as if I were incompetent and I resent that.** And if the Chief Justice wants to hold a hearing for me to be in contempt of court she needs to be my guest. I've had it. I'm not an incompetent person.

[24-25] **The Court:** You are not but you are represented by counsel and counsel gets to do their job.

[page 4, line 1] **Defendant Faltas:** Forcibly. Forcibly.

[2] **Mr. Briggs:** By court order.

[3] **The Court:** Mr. Briggs --

[4] **Defendant Faltas:** By invalid court order.

[page 28, lines 1-2] **Defendant Faltas:** No. That's not what I said about this one. I said--

[3] **The Court:** Y'all aren't communicating then.

[4-5] **Defendant Faltas:** That's right. That's why I want to represent myself --

[Page 69, Lines 1-61] **The Court:** Dr. Faltas, I want you to get yourself together but I also want to make sure we are clear. You asked me a little while ago could you supply a brief and I granted you that opportunity and asked that you do that if you so choose. The specific question now is not whether you can write a brief, but can you put in evidence that your lawyer doesn't offer.

[7] **Defendant Faltas:** Yes.

[8-10] **The Court:** And let me tell you what I think may be best for that point. Can I get an order from you, proposed order from you, that you believe supports that.

[11] **Defendant Faltas:** Absolutely.

[12-14] **The Court:** Mr. Lupton, can I get a proposed order from you that you believe supports your position? I will make a determination and sign one before the trial starts.

[15] **Defendant Faltas:** And let me just say that -

[16-23] **The Court:** Let me finish. I'm not quite done. And if I take Mr. Lupton's position and do not allow you to put other things into evidence, I will have each one of them - that's why I wanted you to pre-mark them - attached to the record for identification so that if another court needs to review this they can understand what was excluded. Now if I let it in, it will be a part of the record as evidence. If I don't, we'll mark it as identification. With that understanding, do you have anything else on this specific point?

[Page 70, Lines 1-51] **Defendant Faltas:** It is the pictures are part and parcel of my testimony. The pictures are part and parcel of my testimony. If I have the right to testify over my lawyer's advice then I have the right to introduce the pictures that are part and parcel of my testimony.

[6-8] **The Court:** Please place that into your proposed order with appropriate case cites and I will consider them both. I've not made a ruling.

Transcript of 24 April 2013 pre-trial part before Columbia Municipal Court Judge Solomon:

00:26:37 - 00:28:43 **CMC's Carl L. Solomon:** Yes, sir. Hmm, one issue that remains, and I think it is appropriate that we address if before we start, **is the motion by Dr. Faltas that was opposed by Mr. Lupton for her to be able to proceed without counsel.** That is the motion of hybrid representation. **This motion has been previously argued and Dr. Faltas has been able to make her position known as well.** At that time, I requested proposed orders by Mr. Lupton so that I could enter a written order on this, so we would be clear on the ruling and what would be allowed and what would not be allowed by the Court. Mr. Lupton provided three orders, **one of which I would be basically stopping him from his representation and allowing Dr. Faltas to proceed pro se.** One of which I would be enforcing as an absolute right, the right of representation by counsel and prohibiting Dr. Faltas from participating in making motions or providing, hmm, evidence or things that the attorney would typically do in a case although she would absolutely be allowed to participate in her defense as well as testify if she so chose, which is her decision. The third order is one that is in between the two and is very akin to what was done in the last trial in which Mr. Lupton participated as well as what was done in the trial where Mr. Briggs represented Dr. Faltas. And that is: the attorney does the typical representation, making motions, putting in evidence, however the Court granted leniency to allow Dr. Faltas to mark any things that she believed to be appropriate for evidence and actually made rulings on those markings and then attached the ones that were found to be irrelevant or otherwise inadmissible to the record for identification purposes for any future court to review. I find that it is in the discretion of the Court to determine how we will proceed. I find that it is the attorney's responsibility and privilege to determine what the appropriate trial strategy is, make motions and enter evidence. But I also find that the Court will allow Dr. Faltas, to the extent that she so chooses to participate, to mark evidence for the purposes of identification outside the presence of the jury as was previously done in the last two trials. And if the attorney and she agree upon it, to allow those to entered into evidence. **So, I will sign the order that is consistent with this ruling. I have entered the words "not entered" on the other two options, although I will provide them to the court so they will be attached to the record and will also be available for any further review.** So, understanding that that's how we will proceed, hmm, let's now move to the disorderly conduct case.

00:28:43 - 00:029:17 **Attorney O.G. Briggs:** Your Honor, could I just add one thing on that subject: I, I have no way of knowing **when the Fourth Circuit or the district court, federal district court, is gonna address that issue but we still have active litigation before both of those courts on that issue**[,] Your Honor.

So, not only had Appellant *repeatedly* asserted *to the trial court* her choice to proceed *pro se*, she had also gone to federal court to vindicate her right to proceed *pro se*; and the trial court was so advised. Attorney Strom's failure to file the necessary record of some of the above transcripts, and to file a reply to the City's brief to expose the City's falsehoods to this Court is cause to relieve him.

C. Failure to Correct City's False Pretense of Appellant's "out of court conduct [...] related to this case".

The City's brief reads "based on her out of court conduct *relating directly to this assault case*," p. 4, "Those orders were issued in direct response to her disruptive conduct *relating to this underlying assault case*," p. 6, "These additional restrictions were put in place due to 'the frivolous, repetitive and abusive nature of Appellant's filings' *in this assault case*," p. 7 "This order acknowledges that up to this point Appellant had not been represented by an attorney *on this assault case*. It further states that going forward she 'must be represented by counsel in any case pending before a court of this State in which she is a party,' *specifically this assault case*," p. 8. "At this hearing, Judge Barber was aware of Appellant's long pattern of disruptive conduct during the almost three and a half years *this assault charge has been pending*." "Judge Barber took the matter under advisement, and in March 7, 2013 order, properly denied Appellant the right to represent herself *on the assault charge*," p. 11. "Notwithstanding, Appellant had already waived her *pro se* right *in this assault case* by her out of court disruptive conduct." and "The circuit court neither committed any reversible error when Judge Barber denied Appellant the right to represent herself *in this assault case*, nor when Judge Allison Lee upheld that decision on appeal." p. 12, (*italics added for emphasis in all eight quotations*).

Thus, the City falsely claims NINE TIMES that the orders restricting Appellant's right to self-representation arose directly from her conduct in this assault case.

Appellant was NOT "arrested" on "this assault case" but was issued a courtesy summons and appeared on 2 October 2009 to request a jury trial and again on 17 November 2009 when the case was called for trial but the City refused to go forward with it for no reason. On neither occasion was Appellant reprimanded or reported for her in-court or out-of-court conduct.

"This assault case" was NEVER called again for trial until after then-SC-Chief-Justice Toal's 7 March 2013 ORDER (attached) which only noted that Appellant had many cases pending in Columbia's Municipal Court and that those cases must be resolved by Judge Solomon after an "immediate" hearing!

Notably, that 7 March 2013 ORDER in no way criticizes Appellant's prior conduct but *indirectly* criticizes *the City of Columbia's Municipal Court's* prior inability or unwillingness to expeditiously dispose of Appellant's pending cases (in half of which, she was the alleged victim, not the defendant). More notably, after her 2 October and 17 November 2009 sole two court appearances "*in this assault case*," Appellant continued to enjoy **unfettered** right to self-representation in *inter alia* the civil case of *Assa'ad-Faltas v. Steele et al.*, where, on 1 December 2009, Judge Barber held a discovery hearing and Judge Lee held an evidentiary preliminary hearing and each judge gave Appellant some of the relief she had sought, and two January/March 2010 hearings before then-SC Circuit Judge Childs, who gave Appellant all the relief she sought: leave to amend her civil case to add defendants (including the City of Columbia) and causes of action, including "taking" of Appellant's land by the City. And most notably, after her sole two appearances "*in this assault case*," Appellant continued to enjoy **and exercise her right to defend herself pro se against criminal charges, specifically the two counts of harassment in the first degree, on one of which Appellant conducted pro se a five-day jury trial and was NOT convicted but earned Presiding Judge Newman's praise as "most pleasant and gracious" and "not frivolous at all."** Appellant, thank God, ably *pro se* obtained later judicial dismissal WITH PREJUDICE of both harassment counts.

Thus the City's lies about Appellant's conduct "*in this assault case*" justifying denial of her constitutional right stem from the same callousness that allowed the planters of explosives in that Cairo church on 11 December 2016 to claim that the victims brought it on themselves by praying to Christ in church. Attorney Strom's failure to file a reply brief to correct the City's falsehoods is cause to relieve him.

4 Extracted complete transcript of the 17 November 2009 proceedings in Columbia's Municipal Court ("CMC") is attached. Please note that same "officer of the courts," Columbia Assistant City Attorney ("ACA") David A. Fernandez, maintained sole prosecutorial responsibility for that case from 17 November 2009, at the latest, until he was replaced by CACA Jessica Mangum *after the first-stage appeal had been argued to SC Circuit Judge Lee on 13 December 2013*. The discovery finally obtained by Appellant, then-*pro se*, on 17 November 2009, lacked Charlene Crouch's criminal records which had been obtained by the City's investigators *before interviewing Charlene Crouch*.

2. Attorney Strom failed to make the most powerful point: This Court Overruled Its Own Denial of Appellant's Constitutional Right to Self-Representation in Criminal Cases.

On 7 April 2011, this Court "appreciate[d]" Appellant's "good faith" offer of an *amicus* in a separate case. But the next day, this Court falsely branded Appellant "frivolous and vexatious." No lawyer forced on Appellant had the courage to ask: how did Appellant *magically* change overnight? Be that as it may, this Court's 8 April 2011 and 22 October 2012 orders were not temporary or probationary. **But on 6 November 2013, this Court acknowledged that its prior orders violated *Faretta*.** Either the 8 April 2011 and October 2012 orders were correct because Appellant's prior conduct came under a *Faretta* exception or the 6 November 2013 order was incorrect in acknowledging that it was error to deny Appellant her *Faretta* right without a valid *Faretta* exception. Newer supersedes older; and specific supersedes general. So, the November 2013 specific restoration of Appellant's right to self-representation in criminal cases puts fault to the prior general denial of her right to self-representation. **If it was correct to deny Appellant's *Faretta* right, that right should not have been restored. If it was it was error to have denied that right of hers ab initio, then "this assault conviction" was structural error.** Attorney Strom's failure to make that powerful argument is sufficient to relieve him for cause.

II. Justice Requires Expunging Everything Filed by All Lawyers in this Case and, if this Appeal were not dismissed, deciding it on the facts and arguments in this Motion and Brief, and Attachments thereto, alone.

The *Wearry v. Cain*, 577 U.S. -, 136 S.Ct. 1006 (2016), *per curiam* cogently answered the dissent: **Reviewing the Louisiana courts' denial of post-conviction relief is thus hardly the bold departure the dissent paints it to be. The alternative to granting review is forcing *Wearry* to endure yet more time on Louisiana's death row in service of a conviction that is constitutionally flawed.**

This Court already knows that: (a) Appellant's trial counsel was ineffective⁵ and (b) the City did not try this simple "simple assault" for "three-and-a-half years" and then only after then-SC-Chief-Justice Toal's 7 March 2013 ORDER mandated "immediate" pre-trial hearing and monthly reports to her office until all Appellant's cases are ended.⁶ This Court also already knows that Attorney Strom was ineffective in this appeal in forfeiting all but one the fourteen issues Appellant painstakingly preserved below and in failing to advance the most compelling argument on the one issue he chose. He further failed to file a record on appeal adequate to refute the predictable lies by the City and failed to file a reply to the City when it filed those lies.⁷

IN SUM: In September 2009, a woman with easily ten times Appellant's physical strength but one tenth of her education claimed to have been "assaulted" by what is the uncontested delivery of one sheet of paper to her, which delivery did not cause any physical injury or even any physical marks on the accuser.

That accuser, who claimed to be "afraid" of Appellant and avoidant of contact with her, had insisted on entering the small confines of Appellant's apartment before the incident and testified that she attempted to enter Appellant's apartment *after the incident but Appellant would not open the door*. But the trial counsel forced on Appellant failed to ask the glaring sensible questions and the appellate counsel failed to

⁵The attached 24 April 2013 transcript proves Lupton's pattern of complaining about prejudicial error without taking care to eliminate it. That day, Lupton had tried to the bench, and obtained a not-guilty verdict in, the false "disorderly conduct" charge against Appellant. **There were then a second trespass charge to be tried that afternoon and "this simple assault case" to be tried the next day.** Lupton allowed the juries to be selected from the same pool before making his successful motion to dismiss the second trespass charge. Thus, the jury to try the assault charge on 25 April 2013 was already incurably tainted by the knowledge that Dr. Assa'ad-Faltas had other criminal charges against her and would not be told that said charges were dismissed. Had Lupton simply taken care to make the motion to dismiss *before* the juries were selected, the *venue* would have been dismissed that day and told to return the next day unaware of any other criminal charges against Dr. Assa'ad-Faltas and thus unbiased against her. But Lupton's obsession with winning "on a technicality" makes him omit sharing his defense strategy with his client and forget the client's long-term best interest.


⁶ So, by the City's own admission, there is a compelling speedy trial issue even if there were no *Faretta* issue.

⁷ After Attorney Strom filed his initial brief and designation of matter, incomprehensibly including the irrelevant Judges Barber/Cooper's 31 March 2010 order, counsel learned of said order's REPEAL by Judge Lee's June 2016 ORDER. (Attached) Mr. Strom refused to file a supplement and instead promised in writing that he will include Judge Lee's 2016 ORDER in his reply to the City; but had now failed to file a reply altogether; and without oral argument, cannot so update the record.

bring out that Appellant would have won had she been allowed to proceed *pro se*.⁸

Seven years and three months later, with all the collateral consequences of a conviction, this Court's conscience should not defer justice for Appellant to PCR proceedings and appeals therefrom when the problem was created by this Court and this Court acknowledge its own fault. Short of that, this Court should examine for itself Judge Lee's April 2015 ORDER and reverse it on its own logic. Attorney Strom's brief and record on appeal must be expunged as they do not speak for Appellant but portray her in a false negative light. The City's brief must be expunged because it is full of lies refuted by the record and this Court should be vigilant in making courts temples of truth.⁹

Submitted on 22 December 2016 and served by personal delivery of a copy thereof to the City Attorney for the City of Columbia, Attorney for Respondent, at her office located at 1401 Main Street, Columbia, South Carolina, 29201, and on Mr. Dudek at his office at 1331 Lady Street, Columbia, SC 29201,¹⁰ all God so willing.


Marie-Thérèse Assaad-Faltas, MD, MPH, Appellant
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⁸ Unless the accuser planned to kill Appellant as soon as she entered her apartment, it is impossible to reconcile the accuser's claim of wanting no contact with Appellant with knocking on her door. The probability of the accuser killing Appellant is augmented by the accuser's living with a man in whose presence his second wife and his son died of gunshot wounds to the head in 1993 and 2016. (Please see attached death certificates and newspaper reports on the Masons.)

⁹ But if this Court has developed an insatiable lust for oppressing Appellant and feels compelled to dismiss this Appeal to punish her for insisting on the dignity of speaking for herself, so be it.

¹⁰ Due to inexplicable difference in the formatting by different printers used, some versions may have different formatting, but the substance is not changed. For additional caution, the last version printed is e-mailed to all concerned.

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER : 139-16-015613

DECEDENT'S NAME: *RICHARD WAYNE MASON*

SEX: MALE

AKA's: NA

SOCIAL SECURITY NUMBER: [REDACTED]

ARMED FORCES: NO

DATE OF BIRTH: JANUARY 10, 1968

AGE: 48 YEARS

TYPE OF PLACE OF DEATH: DECEDENT'S HOME

COUNTY OF DEATH: KERSHAW

NAME AND ADDRESS OF PLACE OF DEATH: 1403 HAIGS CREEK DRIVE, ELGIN, SC 29045

PLACE OF DISPOSITION: KORNEGAY CREMATORY

DISPOSITION LOCATION: ELGIN, SOUTH CAROLINA

METHOD OF DISPOSITION: CREMATION

DECEDENT'S RESIDENCE: 1403 HAIGS CREEK DRIVE, ELGIN, KERSHAW COUNTY, SC, 29045

PLACE OF BIRTH: GERMANY

MARITAL STATUS: NEVER MARRIED

SURVIVING SPOUSE'S NAME: NA

FATHER'S NAME: LARRY WAYNE MASON

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: MARY ANN LOOP

INFORMANT'S NAME: LARRY WAYNE MASON

RELATIONSHIP: FATHER

MAILING ADDRESS: 1403 HAIGS CREEK DRIVE, ELGIN, SC, 29045

FUNERAL HOME: KORNEGAY & MOSELEY FUNERAL HOME, 4645 HARD SCRABBLE ROAD, COLUMBIA, SC, 29229

FUNERAL DIRECTOR: STEVEN G. MOSELEY

LICENSE NUMBER: 2189

EMBALMER'S NAME: NA

LICENSE NUMBER: NA

ACTUAL OR PRESUMED DATE OF DEATH: APRIL 22, 2016

MANNER OF DEATH: SUICIDE

ACTUAL OR PRESUMED TIME OF DEATH: 2056

CAUSE OF DEATH - PART I

LACERATION OF THE BRAIN

OTHER SIGNIFICANT CONDITIONS - PART II:

SELF INFLICTED GUN SHOT TO THE HEAD

CORONER CONTACTED? YES

AUTOPSY PERFORMED? NO

AUTOPSY AVAILABLE? NA

DATE OF INJURY: APRIL 22, 2016

TIME OF INJURY: 2056

INJURY AT WORK? NO

PLACE OF INJURY: 1403 HAIGS CREEK DR (HOME)

LOCATION OF INJURY: 1403 HAIGS CREEK DR, ELGIN, KERSHAW COUNTY, SC, 29045

HOW THE INJURY OCCURRED?

SELF INFLICTED GUN SHOT TO THE HEAD

CERTIFIER NAME AND TITLE: DAVID A. WEST, CORONER

LICENSE NUMBER: NA

CERTIFIER'S ADDRESS: PO BOX 70, LUGOFF, SC, 29078

DATE FILED: APRIL 26, 2016

DATE OF ISSUANCE: OCTOBER 26, 2016

SPECIAL INSTRUCTIONS:

NA

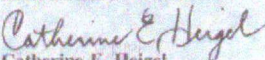
ATTEST: This is a true copy of the death certificate on file in the Division of Vital Records, Public Health Statistics and Information Services of the South Carolina Department of Health and Environmental Control and is issued pursuant to Subpoena of the SOUTH CAROLINA CIRCUIT Court of RICHLAND County, Case No. 2013-CP-40-03525, Dated October 26, 2016.

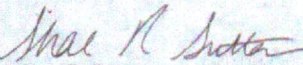
DATE: October 26, 2016


BRANDI HOUYZ
PROGRAM ASSISTANT

SC05557149

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.


Catherine E. Heigel
Director and State Registrar


Shae R. Sutton
Assistant State Registrar

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ELGIN - A service to celebrate the life of Richard Wayne Mason, 48, of Elgin, will be held 4:00 p.m. Friday April 29, 2016, at GOD'S Lighthouse with Pastor David Smith and Pastor Albert Gibson officiating. The family will receive friends from 7:00 to 9:00 p.m. Thursday April 28, 2016, at Komegay & Moseley, 4645 Hard Scrabble Road, Columbia. In lieu of flowers, please make memorials to the church.

Mr. Mason passed away April 22, 2016. He was born in Germany and was a son of Larry Wayne Mason and Mary Ann Loop Mason. Mr. Mason enjoyed fishing, playing baseball and watching football.

Mr. Mason is survived by his parents, maternal grandmother, Betty Loop; sister, Angela Marie Mason (Albert) Gibson; brother, Christopher (Jessica Lyons) James Mason; nieces, Rebecca Lynn Mason and Brianna Harper Mason; nephew, Joshua Alexander Mason; and stepmother, Dinah Steele Mason

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RETIRED ARMY AGENT GOES ON TRIAL OVER EMBEZZLED GOVERNMENT FUNDS

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Author/Byline: JEFF MILLER, Staff Writer Edition: FINAL Section: METRO/REGION Page: 1C

Readability: 9-12 grade level (Lexile: 1130)

A retired military investigator went on trial Monday in U.S. District Court in Columbia on charges he embezzled \$35,000 in government funds meant to pay drug informants in West Germany.

The government will try to prove that Larry Wayne Mason stole the money while he was in a position "of extreme trust" as special agent on a drug suppression team for the Army Criminal Investigation Command, Assistant U.S. District Attorney Buddy Bethea said.

Among the witnesses will be West German police officers and former drug informants who are natives of Iran, Pakistan and Morocco. They will testify through interpreters.

Mason, now a private detective in Columbia, was arrested in October 1986 on more than 100 counts of making false entries on government documents. About half the counts have since been withdrawn.

He faces 56 counts of making false entries and a separate count of embezzlement. He's also charged with impersonating an officer at Fort Jackson in 1984 to get the military air fare rate to fly to West Germany. He had left the service by then.

Bethea said Mason was one of eight or 10 Army agents who investigated drug dealings in cooperation with West German police under a treaty with the U.S. The agents lived in West Germany as civilians and worked to find out about international drug smugglers and large drug dealers.

Mason, Bethea said, was "maybe the most successful" of the agents.

The agents had access to a fund used to pay drug informants. Each agent was required to keep a daily log that included the money he paid out. The payments ranged from \$84.75 to \$6,000.

Bethea said Mason's records conflict with accounts of the West German police and the informants. The informants contend they got little or none of the money Mason was supposed to have paid them in nearly 30 undercover cases in 1982 and 1983, Bethea said.

U.S. District Judge Matthew Perry said the trial could last from two to six weeks.

Index terms: CRIME MILITARY EMBEZZLEMENT Record: 8801190139 Copyright: Copyright (c) 1988 The State

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State, The (Columbia, SC) - August 31, 1988 [Browse Issues](#)

Author/Byline: JEFF MILLER, Staff Writer Edition: FINAL Section: METROREGION Page: 1E

Readability: 10-12 grade level (Lexile: 1170)

After nearly seven weeks of trial, a former U.S. Army undercover agent was found guilty Tuesday of only one of 55 federal charges brought against him for his handling of payoffs to drug informants in West Germany.

A federal jury in Columbia found **Larry Wayne Mason** not guilty of 33 charges of falsifying records of informant payoffs. Jurors could not make a decision on the other 21 charges, including one of embezzlement.

U.S. District Judge Matthew J. Perry ended the trial Tuesday evening after deciding the jury could not resolve the remaining charges.

Mason was found guilty of recording false information about an informant payoff in his official records, which involved a \$152 bonus payment made in November 1982. Mason, who will be sentenced later, faces imprisonment of up to 10 years and a fine of up to \$5,000.

Although successfully defended against most of the charges, Mason was subdued as the jury left the courtroom.

"Everyone wants to congratulate me," he said, adding that being found guilty on one count is no victory. "I'm not guilty of anything."

One of Mason's attorneys, Don Jonas, said there were "some basic problems in the way the case was investigated by the Army." One, he said, was that the drug informants who testified for the government weren't credible.

Government prosecutors denied there were any problems with the investigation or the witnesses.

Assistant U.S. Attorney Buddy Bethea said the government is less disappointed in the not-guilty verdicts than the jury's inability to resolve the other charges. The government can choose to retry Mason on those charges within 70 days.

Mason, 42, retired from the Army before the charges were brought to start his own private detective business in Columbia. A prosecuting attorney described him as "maybe the most successful" of the Army's Criminal Investigation Division agents in West Germany during his assignment there.

The government was trying to prove that Mason embezzled \$35,000 in payoffs he was supposed to give to drug informants while working undercover. The payoffs of up to \$6,000 involved nearly 30 West German drug cases investigated between 1982 and 1983.

Fifty-three of the counts charged Mason with making false entries. The 54th, which the jury could not agree on, charged Mason with embezzling the funds. The jury also couldn't decide whether Mason had impersonated an officer after he left the service to get a discount on airfare from Columbia to West Germany.

About 30 government witnesses, most from West Germany, Iran, Pakistan and Morocco, were brought to Columbia to testify. Major General Eugene Cromartie, the head of Army CID, also testified.

A spokesman for the U.S. attorney's office said the trial's cost was unavailable Tuesday.

The defense put up 20 witnesses, including Mason, who took the stand for most of a week.

Index terms: COURT DRUG MILITARY VERDICT EMBEZZLEMENT; CRIME Record: 8801220219

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(page 1) City of Columbia) vs.) Marie-Therese Assa'ad-Faltas,) Defendant)	Transcript of Record Warrant nos: I-066971, I-066954 Judge Marion O. Hanna ACA David A. Fernandez	November 17, 2009 Jury Trials
--	--	----------------------------------

[1-3] Mr. Fernandez: Your Honor. This case is not being called for any purposes other than to put on the record what was done today.

[4-9] Defendant Faltas: Actually, good morning, Your Honor. I'm sorry, I have waited a long time. ***Actually there is a pending motion to dismiss and the reason for the motion to dismiss is that I am charged with trespassing where I actually live. This cannot be done. I live there. I am there so I cannot be trespassing from there. The motion is in writing.***

[10] The Court: Okay. Well, hold on just a second.

[11] Defendant Faltas: *It's in the file.*

[12-13] The Court: This is a matter of evidence that you need to present when the trial comes up and then ask for a dismissal.

[14-15] Defendant Faltas: ***On the face of the charge I am charged with trespassing at my own address.***

[16-17] The Court: ***Well, the court has no way of knowing what your own address is.***

[18] Defendant Faltas: ***Because it's on the charge.***

[19] The Court: All right

[page 2, lines 1-3] Defendant Faltas: I'm sorry, and I don't mean to be ugly with Your Honor, but if you knew the background of this you would really feel sorry for me. What it is --

[4-13] The Court: Well, excuse me for interrupting again but our Supreme Court has ruled that in a case of a misdemeanor that we don't have -- you don't have any right to a probable cause hearing which in a felony we could have a hearing such as this to see that there was no reason, no probable cause reason, to arrest you but I can't do that in this kind of a hearing. So we need to wait until we get there for you to present that evidence. If that's true, then I'm sure that that would certainly be taken into account. So you are just -- ***you are asking on the trespassing after notice that that be dismissed.***

[14] Defendant Faltas: ***Yes, Your Honor.***

[15-16] The Court: ***But you are going to have to wait until we get to your case for that to be heard.***

[17 - page 3, line 9] Defendant Faltas: All right. Then the other matter is, of course, ***Mr. Fernandez is an officer of the court and he has an obligation to not bring frivolous prosecution.*** I did ask for a jury trial so it -- ***and I invited him to go to the location and see for himself that this is where I live from the face of the address that he has for me and the face of the alleged location where I'm alleged to have --*** I mean I cannot trespass where I live. ***This is not a matter of evidence, this is a matter of law. Just as Your Honor cannot be charged of trespassing by sitting on your bench because this is where you work. So all I'm saying this is a matter of law and, of course,*** Your Honor has -- I am making the motion and I'm trying to argue it and it has been (inaudible). In addition it has become *res judicata* because they -- the complainants went and tried to take a restraining orders against me that I don't park my car where I rent from them. And Magistrate Davis, the Lykesland magistrate, said, no, they cannot do that. So this is *res judicata*. As far as that I can park --

[9 - page 4, line 4] The Court: Ma'am, excuse me for interrupting you but this is so very much a big demonstration as to why you need a lawyer. The magistrate court cannot make *res judicata*. Only the Supreme Court can do that. What the magistrate court does has no effect upon what this court does. You really need to have an attorney because -- and I understand that you are capable of understanding all this but you haven't been to law school. It takes quite a bit of study to get this down and quite a number of years of practice. I think if you would get an attorney, if what you say is true, the matter could be taken care of in a much more reasonable fashion and time. But when you are trying to just jump into these things that you really don't understand, not through any fault of your own but because it's a very complicated matter, then it puts you at such a terrible risk because you can go to jail for these matters. You know, we don't want to see that happen but if you don't have a lawyer you are likely to end up there because you don't understand what you are doing and you are also emotionally involved, of course, in your own case. So I would like for you to get a lawyer and I think that could help you tremendously in getting these matters moved along and perhaps to your advantage as well. Would you do that for me, please?

[5-9] Defendant Faltas: ***If it pleases the court, I believe I'm more likely to go to jail if I have the lawyer and my record against the City is five "0" so far. the City tried to prosecute me five different times and every time I won. That's fine. You want to deny the motion, deny the motion.***

[10] The Court: I'm not hearing the motion, ma'am.

[11] Defendant Faltas: Oh, that's fine.

[12] The Court: All right. You may have a seat.

[13] Defendant Faltas: No, there were two other--

[14] The Court: You may have a seat, ma'am.

[15-16] Defendant Faltas: ***He was supposed to give me some discovery on the record.***

[17] **The Court:** Ma'am, you may have a seat.

[18-20] **Mr. Fernandez:** Your Honor, all I want to just put on the record the point of calling the case was to say that I did hand Ms. Faltas --

[21] **Defendant Faltas:** You didn't hand me anything.

[22] **The Court:** Ma'am.

[23-24] **Mr. Fernandez:** The discovery that you have in your hand--

[25 - page 5, line 1] **Defendant Faltas:** This is not the discovery. You didn't hand me anything else.

[2-3] **Mr. Fernandez:** What I provided Ms. Faltas with is the incident report --

[4-5] **The Court:** Ma'am, if you interrupt one more time you are going to be in contempt of court.

[6-17] **Mr. Fernandez:** incident reports, Your Honor, a statement by the victims, statements provided to the C.P.D. and a copy of the restraining order against Marie Faltas. What remains for the City to turn over is a letter regarding the trespass after notice. There's apparently a letter -- the notice letter that was provided to her. We will give her a copy of that and we'll also put it in the court file as we did all the other discovery. Now I don't know if there's anything remaining but we did have a hearing I believe a few -- last week or two weeks ago in front of Judge Turner discussing what the City needed to provide Dr. Faltas and I believe we have complied. Now I understand she disagrees with that but that's what I would like to put on the record.

[18-20] **Defendant Faltas:** Judge, today he did not hand me anything. He print something from the witnesses and the Court Clerk made copies but Mr. Fernandez did not hand me those copies.

[21] **The Court:** Did anyone hand them to you?

[22] **Defendant Faltas:** No, ma'am, no one did.

[23] **Mr. Fernandez:** Did we not give her the copies of that?

[24-25] **Court Clerk:** You asked me to give you copies. I gave them to you.

[page 6, lines 1-2] **Mr. Fernandez:** If she's doesn't have the copies, there are copies in the court file at the very least,

[3] **The Court:** Is that what you are handing up here?

[4] **Court Clerk:** It's for the file,

[5] **Defendant Faltas:** But I don't have anything yet.

[6-9] **The Court:** Well, I'm sorry, ma'am. It's just a misunderstanding, he thought that they had been passed to you. They will be. I have a copy here of everything that is going to be given to you this morning.

[10-11] **Defendant Faltas:** Could we put on the record what it is because --

[12] **The Court:** We just did that,

[13] **Defendant Faltas:** Well, I haven't --

[14-15] **The Court:** You didn't listen because you were talking, please have a seat, thank you. All right. What's next?

[16] (adjourned)

[17] (case resumes)

[18-20] **Mr. Fernandez:** Your Honor, I believe that concludes the day's matters, Ms. Marie Faltas is still here so I don't know if she has anything she would like to discuss,

[21-23] **Defendant Faltas:** Well, your honor, I still haven't received the discovery and I hope Your Honor acknowledges that I was correct, he didn't hand me anything,

[24-25] **The Court:** Ma'am, if you will go over to the court officer he's trying to hand it to you.

[page 7, line 1] **Defendant Faltas:** Well, I want on the record --

[2-6] **The Court:** Ma'am, if you'll go over to the court officer he's trying to hand it to you. Now it's been handed to Mr. Fernandez who is now passing it to you. You will receive it into your hand. Do you have it, ma'am? Hold it up so that I can see. Very good. Have a seat and overlook it and see if anything is missing.

[7] **Defendant Faltas:** Well, I don't know what's supposed to be in it to know what's missing.

[9] **Mr. Fernandez:** Your Honor --

[10 - page 8, line 10] **The Court:** [10-13] Well, as I said before, ma'am, you were talking while he recited into the record what was in there and that's why you don't know and that's not a good excuse. Have a seat and look at it. [14] (pause) [15 - page 8, line 10] **The Court:** All right what I've been handed, Mr. Fernandez, is -- first of all, there's a restraining order on the top of this group of documents. John Mitchell Jones, 304 Byron Road, Apartment One, Columbia, South Carolina 29209 versus Marie Assa'ad-Faltas, 304 Byron Road, Apartment Three, Columbia, South Carolina 29209. This is a restraining order from the magistrate in Lyklesland. The second document is an incident report and that is followed by a typed statement which is initialed by Dinah G. Steel Mason of 1403 Haigs Creek Drive, Elgin, South Carolina 29045 and signed by the same person and notarized. And also attached is a police department statement form from Charlene Crouch of 300 Byron Road, Columbia, South Carolina 29209. It's a statement signed by the same person. Following that is page two of Columbia Police Department statement continuation signed by Charlene Crouch. Following that is an incident report and this is from the Columbia Police Department. And it starts off the victim reports that the listed subject lives in the building at 304 Byron Road and has been placed on trespass notice, followed by a supplemental incident report, followed by a copy of the courtesy summons on simple assault and a copy of the courtesy summons on trespassing after notice. Anything in your group, Ms. Faltas, that I recited here that you don't have?

[11-14] **Defendant Faltas:** Your Honor, respectfully, I'm Dr. Faltas. And no, everything is here, but I object to the restraining order and (inaudible) statements. That charge has nothing to do with --

[15-16] **The Court:** Ma'am, I just asked you if you have it. That's all I asked you.

[17] **Defendant Faltas:** Yes, but there is --

[18] **The Court:** Thank you very much.

[19-23] **Defendant Faltas:** *There is another issue which Mr. Fernandez wouldn't talk to me except on the record which is when the jury trial comes. I'd like arrangements to be made for the jury to view the site. That is in my written motion and that is exculpatory and --*

[24] **The Court:** Ma'am.

[25 - page 9, line 4] **Defendant Faltas:** *Okay. So then every time it gets called I will ask for this and they will say we haven't made arrangements and it will get put over to the next. I would like Mr. Fernandez to commit today that when the trial comes he will have made arrangements for the jury to view the site.*

[5-6] **The Court:** That will be up to the court. That will be up to the trier of fact and that is not necessarily going to be me. It may be, it may not and I will not rule upon it prematurely. Thank you very much. Have a seat.

[9-11] **Defendant Faltas:** *In fact, Your Honor, while I wish you very happy Thanksgiving, I'd like Your Honor to recuse yourself. I like you very much but our temperaments do not -- I don't see --*

[12-13] **The Court:** Ma'am, it's not -- you have to have a reason better than that you like or don't like the judge.

[14-19] **Defendant Faltas:** *No, no, I'm not saying that. I don't say the reason is that. I'm saying although I like you, I think your temperament cannot give me a fair trial or even a fair hearing. For example, today I was just trying to make the fact that I wasn't handed anything and you threatened to put me in contempt of court.*

[20-23] **The Court:** Ma'am, when I ask you to sit down and be quiet, that's what you are supposed to do. You are not in charge of the court and you need to get that through your head. You are not in charge of the court.

[24] **Defendant Faltas:** Yes, ma'am.

[25 - page 10, line 1] **The Court:** The court will tell you when and what to do and you have to accept that.

[2-4] **Defendant Faltas:** *But when he is saying he gave me something when he didn't I have the right to stand up for myself and say, no, I didn't --*

[5-9] **The Court:** *You have a right to do so when the court wishes to hear from you. You've got to understand that. We got this all straightened out. There was a misunderstanding. It was copied, it was not presented to you. We figured that out but it doesn't help when you keep on talking. It doesn't help.*

[10-11] **Defendant Faltas:** *So who was correct? Who was factually correct? He was saying --*

[12] **The Court:** *What difference does it make?*

[13-14] **Defendant Faltas:** *It makes a lot of difference that you don't give me any credibility. That's why I ask Your Honor to --*

[15-16] **The Court:** *Did I not make sure that you had these papers, Ms. Faltas? Did I not make sure of that?*

[17] **Defendant Faltas:** *Your Honor, I'm Dr. Faltas.*

[18-19] **The Court:** I understand that, ma'am, but you are not entitled to a title in here.

[20] **Defendant Faltas:** Yes, ma'am, I am.

[21] **The Court:** Everyone is Mr. or Ms. In this court.

[22-23] **Defendant Faltas:** *I'm sorry. I'm more educated than the average Ms. or Mr.*

[24-25] **The Court:** That doesn't make any difference on everybody is equal under the law. You are not superior.

[page 11, lines 1-3] **Defendant Faltas:** *I'm not superior but my I didn't get this title for being (inaudible), I got it through a lot of study which -*

[4-5] **The Court:** Well, that has nothing to do with being in court. That doesn't make you better than somebody else.

[6-12] **Defendant Faltas:** *I am better because I don't tell lies. And I think that people who tell lies are not as good as I am. And I am going to be (inaudible) speaker who tell lies and I've had a history of the City using witnesses who tell lies and I went through a six-year ordeal to clear myself so I don't have particular confidence in the City as prosecutors. And I am sorry I do not have to apologize for that. It's not paranoid, it's based on actual life experience.*

[13-17] **The Court:** Well, it doesn't make any difference. That's your opinion but that's not what you can present to the court. That's fine, I understand that but that is not going to help your case. It is not going to be relevant to the jury. It's not going to be relevant.

[18-19] **Defendant Faltas:** *What is going to be relevant for the jury --*

[20] **The Court:** Evidence.

[21-23] **Defendant Faltas:** Yes, and part of the evidence is the actual site for them to go and see and I would like arrangements made. The other--

[24 - page 12, line 11] **The Court:** Ma'am, let me tell you something. It is very, very, very, very unusual to take the jury out to a site and it's not normally done on a misdemeanor and you are going to have to have some very compelling reason and I cannot at this point imagine what that might be but I think you are going to have to present your evidence. I understand from what little I've seen so far there's apartment three and apartment four, but that is not going to require -- just off the top of my head I can't see that it would require a visit. But that is not a ruling. That will have to be made by the trial judge. And you, ma'am, need to learn to cut down on your argument with the court and learn and accept that the court, the judge, runs this court. And when we ask you to be quiet then you need to do so because there's a good reason for that.

[12] **Defendant Faltas:** So have you ruled on the recusal?

[13-14] **The Court:** No, ma'am, I'm not going to recuse myself. No, ma'am.

[15- 20] **Defendant Faltas:** All right. Then may I put on the record an exception to that and may I renew the fact that last time we came before Judge Turner and Mr. Fernandez promised that whenever he sends me something he'll also back it up by fax because those people have been opening my mailbox and taking things out of it.

[21-24] **The Court:** Well, you've just said that but I'm not making any ruling about whatever you present that for. It's not relevant at this time and you'll have to have a transcript of a court record if you want to put something that happened before.

[25 - page 12, line 1] **Defendant Faltas:** That's exactly what I asked Mr. Fernandez for this morning.

[2-4] **The Court:** You don't ask Mr. Fernandez for the transcript. There's a procedure for that. Mr. Canteen can tell you where to go. Thank you.

[5] Court Officer: This way, ma'am.

[6] **Defendant Faltas:** But Happy Thanksgiving, Judge.

[7] **The Court:** Thank you.

[8] **Defendant Faltas:** So where am I going now?

[9-10] **The Court:** The court officer is waiting to help you out there.

[11] **Defendant Faltas:** judge, I need the transcript--

[12-13] **The Court:** Ma'am, the court officer is waiting for you out there to tell you where to go.

[14-15] **Defendant Faltas:** But only you can order that I get the transcript free for indigents.

[16] **The Court:** Ma'am, that's not before me today.

[17] **Defendant Faltas:** So may I put it before you today?

[18] **The Court:** No, ma'am. No, ma'am, not today. No, ma'am.

[25](adjourned)

[page 14]	State of South Carolina)	In The Municipal Court for the City of Columbia
	County of Richland)	
	City Of Columbia,)	
	vs.)	CERTIFICATE
	Marje-Therese Assa'ad-Faltas,)	
	Defendants.)	

This is to certify that the within hearing, consisting of thirteen (13) pages, is a true and correct transcript of record on November 17, 2009, said transcript being prepared to the best of my ability from a tape recording provided to me without the benefit of my being present at the proceeding. I further certify that I am not related to any of the parties in this matter or their counsel, nor do I have any interest, financial or otherwise, in the outcome of the same.

In witness whereof I have hereunto set my hand and seal on the 18th day of November, 2009.

[S/] Nancy S. Ahrens

Notary public for South Carolina

My commission expires: 03-09-19

The Supreme Court of South Carolina

The State,

Appellant,

v.

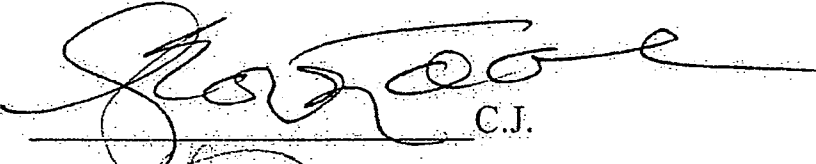
Gregory Kirk Duncan,

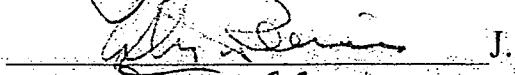
Respondent.

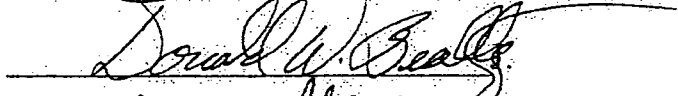
The Honorable Edward W. Miller
Greenville County
Trial Court Case No. 2007-GS-23-05016

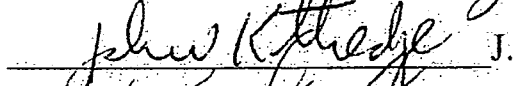
ORDER

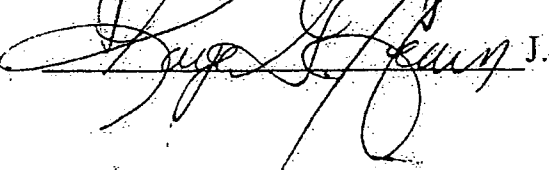
While the Court appreciates Dr. Faltas' good faith attempt to opine on a legal matter pending before the Court, she misapprehends the nature and purpose of an Amicus Curiae brief. The Motion for Reconsideration is respectfully denied.


C.J.


J.


J.


J.


J.

Columbia, South Carolina

April 7, 2011

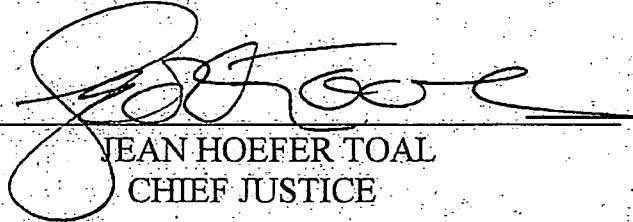
cc: Marie Assaad-Faltas, MD, MPH, Contributor *pro se*
Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General S. Creighton Waters
The Honorable Robert Mills Ariail
Chief Appellate Defender Robert M. Dudek

The Supreme Court of South Carolina

In the Matter of Dr. Marie Assa'ad-Faltas.

ORDER

Under my authority as the administrative head of the South Carolina Unified Judicial System, I have issued previous orders regarding the handling of cases involving Marie Assa'ad Faltas by the courts of this state. It has come to my attention that Dr. Faltas has several matters pending in the Columbia Municipal Court and that the Honorable Carl L. Solomon is the only judge on that court who is not recused in matters in which Dr. Faltas is involved. Judge Solomon is hereby directed to schedule all pending matters involving Dr. Faltas for an immediate hearing, with no extensions of time to be granted except as reasonably necessary for Dr. Faltas' counsel to complete preparations or upon a showing of extraordinary circumstances. Judge Solomon shall see that these matters are brought to an expedient and final conclusion. To this end, Judge Solomon shall provide status reports to this office every thirty days from the date of this order until all pending litigation involving Dr. Faltas has been resolved.



JEAN HOEFER TOAL
CHIEF JUSTICE

Columbia, South Carolina
March 7, 2013


cc: The Honorable James R. Barber, III
The Honorable Carl L. Solomon
The Honorable Dana D. Turner
Dr. Marie Assa'ad-Faltas

ability to contact judges and their staff. Rescinding the Richland County Order will not affect the Supreme Court Order dated January 30, 2014 that restricts her ability to contact various court personnel. The Supreme Court Order supersedes any Order issued by this Court. However, rescinding the Richland County Order will allow Dr. Faltas the ability to enter the Richland County Courthouse to conduct any official business without fear of arrest.

Dr. Faltas raises other reasons to rescind the Order which need not be addressed in this Order as the relief requested by Dr. Faltas is granted. Nothing in this order shall be construed as precluding the issuance of additional restrictions on Dr. Faltas if, after appropriate notice and hearing, it is determined that she has engaged in frivolous, disruptive or inappropriate conduct or filings.

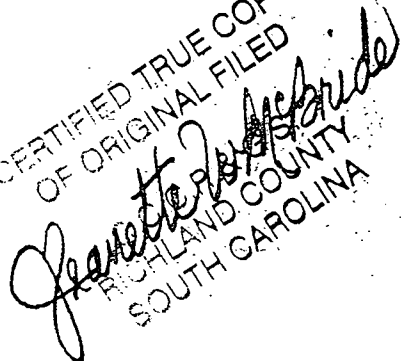
Therefore, **IT IS HEREBY ORDERED** that the ORDER issued on March 31, 2010 is rescinded and hereby cancelled.

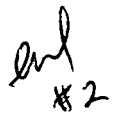
AND IT IS SO ORDERED.


ALISON RENEE LEE
Chief Administrative Judge for Common Pleas
Fifth Judicial Circuit

June 23, 2016
Columbia, South Carolina

CC: Marie Therese Assa'ad Faltas, MD., MPH
Daniel Johnson, Solicitor
The Honorable Jeanette McBride
The Honorable G. Thomas Cooper
The Honorable Clifton Newman
The Honorable DeAndrea Benjamin
The Honorable R. Knox McMahon

CERTIFIED TRUE COPY
OF ORIGINAL FILED

JEANETTE MCBRIDE
CLERK OF COURTS
RICHLAND COUNTY
SOUTH CAROLINA


#2

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER:

IN THE MATTER OF MARIE THERESA ASSA' AD-
FALTAS, MD., MPH

BOOK 30 PAGE 124

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 21 day of July, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Marie Therese Assa' Ad-Faltas,
MD., MPH,

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE MATTER OF MARIE)
THERESE ASSA'AD-FALTAS, MD.,)
MPH,)

Petitioner.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

ORDER

2016 JUL 21 PM 4:40
JEANETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter comes before the Court on Petitioner's Motion, pursuant to Rule 59(e), SCRCPC, to Amend/Clarify the Court's Order, dated June 23, 2016 ("Order"), which rescinded a prior court order that had restricted Petitioner's access to the Richland County Courthouse during certain times. In Petitioner's Motion, she asserts that the Richland County Clerk of Court's Office ("Clerk's Office") did not mail Petitioner a copy of the Order until July 6, 2016, and thus, most likely misread the Court's "reference to SC's Supreme Court's orders as a ban on the Clerk serving [Petitioner] with any and all papers related to her cases." Accordingly, Petitioner asks the Court to clarify its Order to ensure that the Clerk's Office is aware that the Order does not prohibit it from "serving [Petitioner] with any and all papers related to her cases."

In its Order, the Court referenced three Supreme Court Orders, dated January 30, 2014, January 7, 2016, and March 28, 2016. The January 30, 2014, Order restated restrictions that were already in place concerning Petitioner's ability to appear *pro se*, make *pro se* filings, and contact judges and other court personnel. The January 7, 2016, Order and the March 28, 2016, Order directed the Clerk's Office to allow Petitioner to file a motion for the appointment of counsel to represent her in a potential PCR action. These Supreme Court Orders do not prohibit the Clerk's Office from mailing documents to Petitioner. Accordingly, there is no need for this Court to clarify its Order on this ground.


Petitioner also requests that "orders not bearing a specific case number [be] booked and paged so that a formal record of them" may be accessed by the public. It appears that the copy of the Order that Petitioner received was not stamped with a Book and Page number. The Order, however, has been filed in Miscellaneous Book 30, Page 122, in the Clerk's Office. Most orders that are filed at the Clerk's Office include case numbers that correlate with their respective cases. These orders are filed electronically in the Clerk's Office's Case Management System ("CMS"), which can be accessed by the public using computers at the Clerk's Office. Some orders,

md
#1

however, are more general and do not relate to any case specifically, and thus, do not have a case number. These orders are filed in hard copy format in "Miscellaneous Books" that can be accessed by the public at the Clerk's Office. The Order in this matter related to Petitioner's access to the Richland County Courthouse generally and did not relate to a specific case. Accordingly, the Clerk's Office filed the Order in Miscellaneous Books.

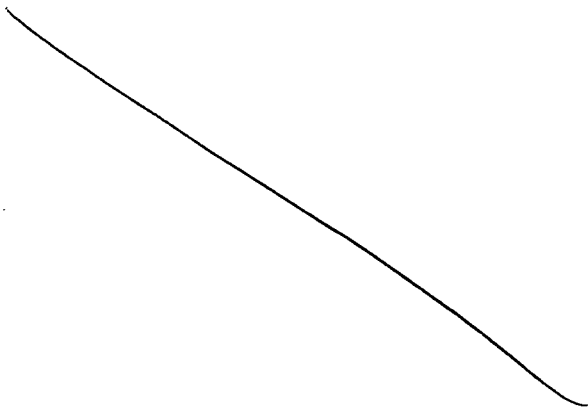
In light of the aforementioned, this Court hereby **DENIES** Petitioner's Motion to Amend/Clarify the Order.¹ Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.



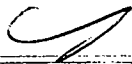
ALISON RENEE LEE
Fifth Judicial Circuit

July 21, 2016
Columbia, South Carolina



¹ Petitioner also raises other grounds for reconsideration of the Order. After careful consideration of these other grounds and the record in this matter, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

ay
#2

RECEIVED
JUL 1 9 REC'D
BY: 

BOOK 30 PAGE 127

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE UNIFIED COURT SYSTEM
In Re: Marie Assa'ad-Faltas, MD, MPH

Timely Motion to Amend/Clarify 23 June 2016 ORDER
And to Cause it to be Booked and Paged
so that a formal record of it may be easily accessible to all concerned

Marie Assa'ad-Faltas, MD, MPH, did not receive the 23 June 2016 ORDER until she went to the court-house and was given a copy on 5 July 2016. A copy of that ORDER was not mailed to Dr. Assa'ad-Faltas by the Clerk (or anyone else apparently) until 6 July 2016 as evidenced by the attached envelope copy.

This motion is therefore timely. It is also served on the Honorable Judge Lee and on all other entities identified as copied with the 23 June 2016 ORDER by causing the Clerk to place it in the respective mail slot for each respective entity. It is also served on Judge Newman, *filie*, and on Judge Manning.

Dr. Assa'ad-Faltas knows she cannot *be* anyone else's conscience but has a duty to *prod* all consciences.

The clarification part arises from the Clerk's office *likely* misreading Judge Lee's reference to SC's Supreme Court's orders as a ban on the Clerk serving Assa'ad-Faltas with any and all papers related to her cases. Judge Lee is therefore asked to clarify that nothing in any order thwarts Assa'ad-Faltas' access to public records, hers or others'. Otherwise, orders not bearing a specific case number should be booked and paged so that a formal record of them may be easily accessible to all concerned and to the public.

The modification part addresses solely an error in reciting a *procedural fact*: the only two General Sessions charges *ever* brought against Assa'ad-Faltas were NOT "remanded to municipal court or have been dismissed," they were remanded to municipal court **and** dismissed. The 23 June 2016 ORDER may be erroneously read to suggest that some criminal charges are still pending upon remand to municipal court.

The other issues raised by Dr. Assa'ad-Faltas in the 7 June 2016 *may* have not been *necessary* for Judge Lee to grant the *narrow* relief of rescission of the 31 March 2010 "Richland County Order" but they are necessary for the future of justice in this Court. At least now-SC-Circuit Judge DeAndrea Benjamin and Columbia City Manager Teresa Wilson started their careers as law clerks to Judge Manning. Judge Manning also presided over the August 2009 two-day jury trial of *Ingram v. Triffon*. To Judge Manning as a *quasi* father to Judge Benjamin and Manager Wilson, and to Judge Newman, *père*, Dr. Assa'ad-Faltas shares that her father always said that a true parent wants the children to *be better* than him/herself, **not have more, not be more powerful, but be better**; that includes *be* more courageous and compassionate.

WHEREFORE, in addition to the Rule 59(e) relief this timely motion seeks, Dr. Assa'ad-Faltas seeks a hearing by all the entities served to examine how the system failed Dr. Assa'ad-Faltas and failed to rehabilitate convicted felon Teresa Ingram, who went on to commit at least 353 perjuries against Dr. Assa'ad-Faltas in a failed attempt to frame her for harassment. The state of the world leaves no room for sins of omission which are, in Dr. Assa'ad-Faltas' conscience, as reprehensible as sins of commission.

Submitted and served through the Clerk on all concerned entities on 15 July 2016.

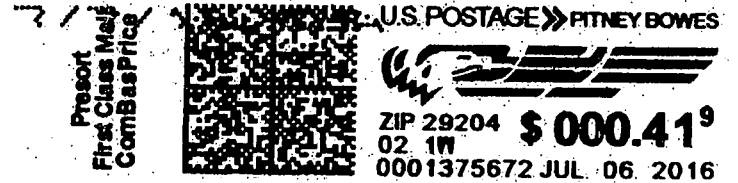
Marie-Thérèse Assa'ad-Faltas, MD, MPH, movant *pro se*
P.O. Box 9115, Columbia, SC 29290
Phone: (803) 783-4536 e-mail: Marie_Faltas@hotmail.com

Jeanette W. McBride
CLERK OF COURT
RICHLAND COUNTY
P.O. Box 2766
Columbia, SC 29202-2766

Return to sender if not
delivered in five (5) days.

Marie Faltus
P.O. Box 9115
Columbia SC 29290

583906625 182 FMIRNMB 29290



BOOK 30 PAGE 128

State of South Carolina

County of Richland

In the Columbia Municipal Court

City of Columbia,
vs.

Marie-Therese Assa'ad-Faltas, Defendant.

Transcript of record
Transcribed by:
Nancy S. Ahrens

Jury selection and motions held before the honorable Carl L. Solomon, presiding judge,
in the Columbia Municipal Court, Columbia, South Carolina, on April 24, 2013.

Appearances: David A. Fernandez, Esquire Appearing for the City
Theodore N. Lupton, Esquire Appearing for the defendant

[page 1, lines 1-2] **The Court:** We have a trespassing case. First of all, do we have any jurors? Do you know how many jurors we have?

[3] **Court Clerk:** I'm not sure yet.

[4] **The Court:** Have you got any idea how many?

[5] **Court Clerk:** I think we have quite a few.

[6-7] **The Court:** Okay. **Any argument or motions as to whether to proceed on a jury trial on the trespassing?**

[8-13] **Mr. Fernandez:** I will move for a trial in absentia. I would again ask the court to establish jurisdiction. And I will direct the court's attention to the notice provided the defendant that does say your failure to appear will result in your trial without a jury. So I will respectfully request that we proceed in the same format via bench trial.

[14] **The Court:** Mr. Lupton?

[15 to page 2, line 11] **Mr. Lupton:** Your Honor, my client has directed that under no circumstances do I consent to a T.I.A. However, as an officer of the court, the concessions I made on the disorderly trial I think are still applicable. I concede she had notice and she willfully chose not to be here. Having said that, as far as the jury trial waiver there is case law - and I didn't pull it because I didn't, for whatever reason, did not anticipate that she would actually not show up but there is case law that says failure to appear is not a waiver of your rights to trial by jury. So I think that while I cannot - I don't believe I have grounds to object to the T.I.A. because I think - I can ask the court to as a matter of discretion not go forward in her absence but I do object to waiving the jury trial.

[2-7] **The Court:** Having heard the arguments, the court rulings are as follows. Jurisdiction is established, notice was properly given, a trial in absentia is appropriate at this time. I will do so with a jury over the State's objections. Please bring the jurors down. We'll be in recess ten minutes until the jury is in the courtroom.

[8] **Mr. Lupton:** Thank you, Your Honor.

[9] (recess)

[10] (case resumes)

[11] (Jury venire enters the courtroom)

[12 to page 3, line 25] **The Court:** [12 to page 3, line 21] We have been resolving some issues so there are some things that may have been requested of you that no longer will be because of the way we were able to proceed. So while we apologize for inconveniencing you in waiting, we were able to move some business and you were not sitting there for nothing. I'm Carl Solomon. I'm the judge for both today and tomorrow. And we will spend some time together and potentially have jury trials today and tomorrow. We are going to proceed by having the parties involved in this introduce themselves and any potential witnesses and then I will ask you some questions to see whether or not you have any prior knowledge regarding this matter or any relationship or affiliation with the people that are potentially involved. After that occurs and we are able to begin the striking of the jury, we have a randomly generated list and we will start calling names. If you are lucky enough to have your name called, we are going to ask that you come up front and turn around and face so both sides can see you and we are going to have you tell us what your name is and where you work and whether or not you are married. While you are doing that, if you are married, please go ahead and say where your spouse works. That's more than we normally do but we often get asked to get you to say that anyway so just go ahead and say it. It is designed solely for them to have some information about you, although that's not a lot, so they can make a decision as to whether or not they wish to try to invite you to be on the jury or excuse you. If you are not selected to be on the jury, please go back and have a seat in the back of the courtroom because there may be issues that we have to address that may or may not necessitate you being here a little longer. If things go relatively smoothly then we intend to seat six people on the jury and one alternate and the rest of you will be excused for the rest of the day. So some of you will be out of here in time for lunch and the rest of the day, others of you may get the opportunity to stay with us for a little longer. There's also a trial that may be scheduled for tomorrow as well and we will discuss that before we do any letting of everybody go. All right. [22-25] **The case today is the City of Columbia versus Dr. Marie Faltas, case number 37025FK. The charge is trespassing. Mr. Fernandez, will you please introduce yourself and anyone that may be testifying on behalf of the City?**

[page 4, lines 1-6] **Mr. Fernandez:** Thank you, Your Honor. Ladies and gentlemen, my name is David Fernandez. I'm an Assistant City Attorney for the City of Columbia. I handle prosecutions for the City. Today my witnesses will be four individuals. Officer Julie Ashmore, Retired Officer Charles McSwain, Dinah Steele Mason and Larry Mason. Thank you.

¹⁷ The Court: Mr. Lupton.

¹⁸⁻¹⁰ Mr. Lupton: Thank you, Your Honor. My name is Ted Lupton. I am in private practice over in Lexington. I am representing Dr. Marie Faltas.

¹¹⁻¹⁴ The Court: Anyone here related to, friends with or have any type of involvement with any of the people introduced by Mr. Fernandez and/or City of Columbia Police Department or attorney's office? ¹¹⁵ (no response)

¹¹⁶⁻¹⁹ The Court: Let the record reflect that there was no one to raise their hand or otherwise identify themselves. Anyone here been represented by, related to or have any relationship with Mr. Lupton and/or his client, Dr. Marie Faltas? ¹²⁰ (no response)

¹²¹⁻²³ The Court: Please let the record reflect that no one raised their hand or otherwise identified themselves. Are there any other voir dire requested by the City?

¹²⁴ Mr. Fernandez: No, Your Honor.

¹²⁵ The Court: Any requested by you, Mr. Lupton?

^{page 5, line 11} Mr. Lupton: The standard, Your Honor.

¹²⁻³ The Court: All right. They've been pre-qualified in my understanding. Are you asking for a full pre-qualification?

¹⁴⁻⁵ Mr. Lupton: No, Your Honor. Just the standard if they know anyone or they are in law enforcement or any of that stuff.

⁶⁻¹⁰ The Court: All right. I assume some of that has been done on Monday but we have plenty of time, we'll do it. Any of you involved - any of you employed as a law enforcement officer, constable, within the four walls of any courthouse or closely related to anyone who is? If so please raise your hand. ¹¹¹ (no response)

¹¹²⁻¹³ The Court: Seeing none. Any of you employed by the City of Columbia? ¹¹⁴ (no response)

¹¹⁵⁻¹⁶ The Court: Seeing none. Anything else you'd like, Mr. Lupton?

¹¹⁷ Mr. Lupton: No, Your Honor.

¹¹⁸ The Court: All right. Anything else, Mr. Fernandez?

¹¹⁹ Mr. Fernandez: No, Your Honor.

¹²⁰⁻²¹ The Court: All right. If there's nothing further, Madam Clerk, please start calling the jurors.

¹²² Court Clerk: Kathryn Edwards.

¹²³⁻²⁴ Juror: I am Kathryn Edwards. I'm a professor at U.S.C. and I'm single.

^{125 to page 6, line 1} Mr. Fernandez: We'd like to seat, Ms. Edwards, Your Honor.

¹²⁶ Mr. Lupton: Please excuse the juror from this case.

¹³⁻⁴ The Court: Ms. Edwards, will you please have a seat in the back.

¹⁵ Court Clerk: Alva Woodham.

¹⁶⁻⁸ Juror: I'm Alva Woodham. I'm employed by the South Carolina Forestry Commission and I'm married and my wife is a school teacher.

⁹⁻¹⁰ Mr. Fernandez: We'd like to seat Mr. Woodham, Your Honor.

¹¹ Mr. Lupton: Please seat the juror.

¹¹² Court Clerk: Angela Kincade.

¹¹³⁻¹⁴ Juror: My name is Angela Kincade. I work at Hilton Hotel in housekeeping and I'm single.

¹¹⁵⁻¹⁶ Mr. Fernandez: We'd like to seat Ms. Kincade, Your Honor.

¹¹⁷ Mr. Lupton: Please seat the juror.

¹¹⁸ Court Clerk: Jeffery Smolka.

¹¹⁹⁻²⁰ Juror: Jeffery Smolka. I work at the South Carolina business One Stop. My wife, Margaret, is a stay-at-home wife.

¹²¹ Mr. Fernandez: We'd like to seat this juror, Your Honor.

¹²² Mr. Lupton: Please seat the juror.

¹²³ Court Clerk: Morgan Grestner.

¹²⁴⁻²⁵ Juror: My name is Morgan Grestner. I'm employed at Ally and Eloise Bake Shop on Forest Drive and I'm single.

^{page 7, line 11} Mr. Fernandez: Please seat the juror, Your Honor.

¹² Mr. Lupton: Please seat the juror.

¹³ Court Clerk: Lamar Brown.

¹⁴⁻⁵ Juror: I'm Lamar Brown. I'm a retired teacher and my wife is a retired teacher.

¹⁶ Mr. Fernandez: Please seat the juror, Your Honor.

¹⁷ Mr. Lupton: Please seat the juror, Your Honor.

¹⁸⁻⁹ Court Clerk: Susan Williams. Crystal Vereen. Shannon Martin.

¹¹⁰⁻¹¹ Juror: My name is Shannon Martin and I'm a pharmaceutical rep and my husband is a physician.

¹¹² Mr. Fernandez: We'd like to seat Ms. Martin, Your Honor.

¹¹³ Mr. Lupton: Please seat the juror.

¹¹⁴ The Court: Alternate.

¹¹⁵ Court Clerk: Heather Smith.

¹¹⁶ Mr. Fernandez: The City would waive an alternate.

¹¹⁷ The Court: Mr. Lupton.

¹¹⁸⁻¹⁹ Mr. Fernandez: I don't know that the trial is going to be very long.

¹²⁰ Mr. Lupton: Your Honor, --

[21-22] **The Court:** Why don't we proceed with an alternate. I'll make the decision. All right.

[23] **Court Clerk:** Heather Smith.

[24-25] **Juror:** My name is Heather Smith. I work for the South Carolina Department of Mental Health. I'm unmarried.

[page 8, lines 1-2] **Mr. Fernandez:** The City would like to seat Ms. Smith, Your Honor.

[3-4] **Mr. Lupton:** Your Honor, I move to excuse the juror from this case.

[5] **Court Clerk:** Michelle Anthony. Cory Brown.

[6-7] **Juror:** My name is Cory Brown and my occupation is Coca-Cola and I'm unmarried.

[8] **Mr. Fernandez:** Seat this juror, Your Honor.

[9] **Mr. Lupton:** Please seat the juror.

[10-11] **The Court:** Without any elaboration, are there any issues related to the selection or qualification of the jury?

[12] **Mr. Fernandez:** None from the City, Your Honor.

[13] **Mr. Lupton:** No, Your Honor.

[14 to page 9, line 1] **The Court:** Ladies and gentlemen, of the jury, we've got a couple of issues that we've got to address that do not concern you and, therefore, we are going to give you a few moments to get to know each other but not discuss anything that has gone on in the courtroom until this time. I'm going to give you a preliminary charge before we start. One of the things that you'll hear me tell you a couple of times today is please do not begin any deliberations prior to being instructed to do so. There will be times when you'll have information, much more than you have now, but the case will not be concluded and we'll ask you to not only reserve an open mind, but not to deliberate or discuss the case until you are asked to do so. For now if you'll please be kind enough to go into the jury room. We'll address a few issues and then we'll be ready to begin. ^{[2] (Jury leaves the jury box).}

[3-13] **The Court:** ^[3-11] Ladies and gentlemen, you are not on this jury; however we do have a trial again in the morning so seven of you may get the privilege of coming back on tomorrow. The remainder of you will be let go not only for today, but for the week. The two ladies in the back, because of the way our system works, we have made an agreement that we're just going to continue, not continue, we are going to re-start the process in the random order that was previously decided. So that puts you two up first so come on back up in the mix and we'll go down the list. ^[12-13] Madam Clerk, if you will be kind enough to make sure we do not call the jurors that were selected. Have you identified them?

[14] **Court Clerk:** Yes.

[15-16] **The Court:** We'll go down the list skipping those that have been selected. Madam clerk, when you are ready.

[17] **Court Clerk:** Donna Salais.

[18-21] **The Court:** I apologize. One moment, before we do that. I don't anticipate any; however, I am happy to hear. Are there any additional voir dire requested at this stage for the remainder of the panel that was not requested previously?

[22-23] **Mr. Fernandez:** No, Your Honor. But how are we calling the other

[24-25] **The Court:** We're going back to the top, ma'am, and go back down?

[page 10, line 1] **Court Clerk:** Yes. Is that what you wanted?

[2] **The Court:** Yes.

[3] **Mr. Fernandez:** We are going to call the two

[4] **The Court:** It was odd that the

[5] **Court Clerk:** You want the other two?

[6] **The Court:** You are including them as well?

[7] **Court Clerk:** Yes.

[8-9] **The Court:** It would seem that the people that should come up first should be the people that were previously stricken.

[10] **Court Clerk:** Okay. I can start right here.

[11-12] **The Court:** Please do. Please start including the two people that were previously stricken.

[13] **Court Clerk:** Kathryn Edwards.

[14-15] **The Court:** We addressed that. Mr. Lupton, did you have any additional voir dire at this time?

[16] **Mr. Lupton:** No, Your Honor.

[17] **The Court:** Okay. Thank you.

[18] **Court Clerk:** Kathryn Edwards.

[19-20] **Juror:** Kathryn Edwards. I'm a professor at U.S.C. and I'm single.

[21-22] **Mr. Fernandez:** The City would like to seat Ms. Edwards, Your Honor.

[23] **Mr. Lupton:** Please strike this juror.

[24] **Court Clerk:** Heather Smith.

[25 to page 11, line 1] **Juror:** My name is Heather Smith. I work for the South Carolina Department of Mental Health and I am unmarried.

[2] **Mr. Fernandez:** The City would like to seat Ms. Smith.

[3] **Mr. Lupton:** Please seat the juror.

[4] **Court Clerk:** Olanda Scurry. Donna Salais.

[5-6] **Juror:** I'm Donna Salais. I work at Palmetto G.B.A. I'm married and my husband works at Midlands Tech.

[7-8] **Mr. Fernandez:** The City would like to seat Ms. Salais, Your Honor.

[9] **Mr. Lupton:** Your Honor, please excuse this juror.

[10] **Court Clerk:** David Johnson.

[11-12] **Juror:** David Johnson, I work for the Babcock Center. I'm single.

[13-14] **Mr. Fernandez:** The City would like to seat Mr. Johnson, Your Honor.

[15] **Mr. Lupton:** Please seat the juror.

[16] Court Clerk: Utpal Patel.

[17-18] Juror: I'm Utpal Patel. I am an engineer and my wife is a software programmer.

[19] **Mr. Fernandez:** Please seat Mr. Patel, Your Honor.

[20] **Mr. Lupton:** Please seat the juror.

[21] Court Clerk: Michelle Anthony. Randolph Bryson.

[22-23] Juror: My name is Ray Bryson. I operate Pope Davis Tire and my wife is an accountant there.

[24] **Mr. Fernandez:** Please seat Mr. Bryson, Your Honor.

[25] **Mr. Lupton:** Please seat the juror.

page 12, line 11 Court Clerk: Jackie McDuffie.

[2-3] Juror: My name is Jackie McDuffie. I'm a (inaudible) at Columbia Farms. I'm single.

[4-5] **Mr. Fernandez:** We'd like to seat Mr. McDuffie, Your Honor.

[6] **Mr. Lupton:** Please seat the juror.

[7] Court Clerk: Peggy Warren.

[8-9] Juror: My name is Peggy Warren. I work for School District One and I'm single.

[10] **Mr. Fernandez:** Please excuse the juror, Your Honor.

[11] Court Clerk: Mary Yarborough.

[12-13] Juror: My name is Mary (inaudible) Yarborough and I work at the South Carolina Department of Mental Health and I'm not married.

[15] **Mr. Fernandez:** Please seat Ms. Yarborough, Your Honor.

[16] **Mr. Lupton:** Please seat the juror.

[17] **The Court:** Alternate.

[18] Court Clerk: Willie Dinkins.

[19-20] Juror: My name is Willie Dinkins. I'm a janitorial service with (inaudible). I'm single.

[21-22] **Mr. Fernandez:** We'd like to excuse this juror, Your Honor.

[23] Court Clerk: Mary Terry.

[24-25] Juror: I'm Mary Rebecca Terry and I'm an occupational therapist at Palmetto Health and I'm single.

page 13, line 11 **Mr. Fernandez:** Please seat Ms. Terry, Your Honor.

[2] **Mr. Lupton:** Please seat the juror, Your Honor.

[3-4] **The Court:** Counsel, any motions we need to address at this time regarding the selection?

[5] **Mr. Fernandez:** No, Your Honor.

[6] **Mr. Lupton:** No, Your Honor.

[7] **The Court:** Okay. [8] (Balance of venire is dismissed) [9] (Jury is dismissed until 4-25-13)

[10-14] **The Court:** All right. **Mr. Lupton and Mr. Fernandez, it is my intention to charge 1-6 from the Ervin book, fair and impartial jurors and to give them a nice thank you for being here and being a part of the case today. In addition to that, is there any request for any charge related to the defendant not being present.**

[15-16] **Mr. Lupton:** Your Honor, you had said that you would advise us what the charge was for that?

[17-23] **The Court:** There's actually a charge 1-4 that relates to the defendant's right not to testify which I will modify that will read as follows or very close hereto. The fact that a defendant is not present and does not testify on her own behalf does not create any presumption against her. You must not permit this fact to weigh in the slightest against the defendant, nor should this fact enter into the discussions or deliberations of the jury in any manner.

[24-25] **Mr. Lupton:** The only thing I would ask is - I will not object to that, Your Honor.

page 13, line 11 **The Court:** Okay. Any objection, Mr. Fernandez?

[2] **Mr. Fernandez:** No, Your Honor.

[3-4] **The Court:** Any other motions or anything else needs to be done prior to bringing the jury in?

[5-17] **Mr. Lupton:** I will try to make it as quick as possible, Your Honor, but a number of things. First, my client has made considerable issue of the fact that the City had initially after the previous trespass trial entered on this trespass trial the notation on the public index that it was closed, bench trial not guilty. She believes that the court made a finding that the first trespass acquittal had preclusive effect in her words and was collaterally estopping the City from going forward on the second one and that you, therefore, entered a not guilty and the reopening of it would be barred by double jeopardy. **I ask the court - if the court did enter any kind of dismissal or not guilty if we could go ahead and put that on the record. If the court didn't, if we could put that on the record just to address that argument for any review.**

[18 to page 15, line 11] **The Court:** The court has made no finding as to the innocence and/or guilt regarding Dr. Faltas on this charge based on any prior finding and/or ruling by the jury. The court specifically scheduled this case and has continued to go forward with it being scheduled and being heard and at no time made any indication that it had dismissed the case for any reason. I will explicitly find to the extent necessary that if anything contrary to that was placed in any public record that was a scrivener's error and it's not binding upon the court and we are going forward.

[2-5] **Mr. Lupton:** Thank you, Your Honor. Next, the court had previously heard on a separate date motions to produce impeachment evidence. I would ask that that be incorporated. The court-

[6-9] **The Court:** Let me do this if I may. Are there any things that were previously raised that y'all now agree upon that you didn't do we can narrow this and then let's talk about anything you don't agree on.

[10-12] **Mr. Lupton:** We have agreed this morning to limit the trial of this case to the facts that occurred on the date of the offense, on that July date.

[13-17] **The Court:** Okay. So the things that remain in disagreement are the matters we previously heard when we set aside the day or whatever it was to have pre-trial motions including any investigative file from internal affairs regarding the officer presenting the case.

[18] **Mr. Lupton:** Yes, Your Honor.

[19-20] **The Court:** Is there any new or after-acquired evidence that was not argued at that time?

[21-22] **Mr. Lupton:** No, Your Honor. You said you wanted to put it all on the record today.

[23 to page 16, line 1] **The Court:** Absolutely. And I will incorporate the arguments you previously made and unless there is a necessity of additional argument from the City I will incorporate the rulings thereto as well.

[2-6] **Mr. Fernandez:** All right, Your Honor. Regarding what we agreed to I'm not sure I agreed exactly to that. I agree that what I was suggesting is that we limit the defendant's behavior, the allegations of disturbing or however you want to call it, the neighbors.

[7-9] **Mr. Lupton:** Your Honor, I apologize. I did mean to misspeak. I agree that they are going to put into evidence the alleged notices, the 404 kind is what we agreed to.

[10-11] **Mr. Fernandez:** That's correct. That's my understanding as well.

[12-18] **Mr. Lupton:** Okay. That was what I meant when I said that. I apologize for not being clear. **Also, the objection to striking a second jury from the same jury pool, I made a similar argument the first trespass trial I believe that striking a second jury from the same pool where the jury that sits on the case tomorrow will have knowledge that she was arrested and tried for a criminal violation the previous day taints the jury. They are aware of that action.**

[19 to page 17, line 4] **The Court:** [19 to page 17, line 1] I will, of course, as I previously did, remain consistent and proceed in spite of that objection, it being overruled. I will, of course, instruct the jury as I do every jury with the presumption of innocence. I will also allow counsel to the extent that he wishes to propose additional curative charges, consider those and make any ruling upon those and, if we agree to give them, give those to address this issue to the extent counsel believes that a charge is necessary. You don't have to do that today, of course. [2-4] They are not coming in until tomorrow. However, I will give you the opportunity to draft a curative charge if you deem it appropriate to suggest one.

[5-7] **Mr. Lupton:** Thank you. **I don't think any curative charge can cure that prejudice** but I will consider that overnight. Thank you, Your Honor.

[8-9] **The Court:** Now if you don't propose one, you're going to waive your right to have proposed one.

[10] **Mr. Lupton:** I understand that, Your Honor.

[11-14] **The Court:** If you want to stand on a threshold issue that's fine but I am expressly giving you the opportunity to draft one and it's your decision and your inclination as to whether to do so or not.

[15-22] **Mr. Lupton:** [15-18] Thank you, Your Honor. And I believe I have to make this motion under *Gentry*. I move to quash the trespass indictment as well as under *Ramsey*. I say indictment. I apologize. Ticket. First, it was written under the wrong code section. It was written under 600 rather than 620. That is 16-11-600 instead of 16-11-620. [20-22] And also to the extent that the City is relying upon any evidence that occurred outside the presence of the officer to make the arrest then it would be barred by *Ramsey*.

[23] **The Court:** Mr. Fernandez.

[24 to page 18, line 1] **Mr. Fernandez:** Yes, Your Honor. Two issues there so I'll go in order. Mr. Lupton is correct, if Your Honor has a copy of the tickets or I can give you these -

[2] **The Court:** I do have a copy.

[3-14] **Mr. Fernandez:** [3-7] The violation is listed as trespass after notice. That would be correct. The violation section number is 16-11-600, that's incorrect. That actually doesn't exist, there is no 600. The first statute I believe is 620 in that subsection having just pulled it up on the website at least. Anyways, I am familiar with the case law. [8-14] I've come across this issue before. Case law allows the prosecution to amend the charges up until any point during the trial until the jury receives the case to deliberate with, assuming that the material elements are not different. And in this case the elements of the crime would be exactly the same whether or not it's trespass under whatever 600 exists or not or 620. So to that extent the case law does permit the prosecution to amend the -

[15-16] **The Court:** Number one, the first question. When did 600 go away?

[17-19] **Mr. Fernandez:** I don't know. I pulled it up this morning after Mr. Lupton told me it's under 600 and it's not showing up the online database.

[20-23] **The Court:** There was a point in time when 600 existed as a trespass charge involving lands where there are horses, mules, cows or hogs, and it's not a current statute but it does not mean that it was or was not at the time that this charge was written.

[24 to page 19, line 11] **Mr. Lupton:** It was a statute as of when I first did the research and pulled up the statutes. I'm not sure when it was – I don't have internet access so I can't go look.

[2-6] **The Court:** Let's assume for argument that it was a statute at the time this charge was written. Mr. Fernandez, what is your argument on if there are two statutes that are both possible to be charged and the written number is for one that is not what's going forward now, what is your position on that?

[7-15] **Mr. Fernandez:** My position is and the case law supports that the prosecution is able to amend the charge assuming the material elements of the charge remain the same. And the case law talks about not trespass but it talks about the varying degrees of assaults or attempted murder, slash, murder. It talks about those type of situations where the elements are the same. What we are talking about is just the law, you are able to amend mid-trial, even up until the very end when the jury receives the charge from the court.

[16] **The Court:** Are the elements the same with 600 and 620?

[17-21] **Mr. Fernandez:** Well, I would argue, Your Honor, that there was a scrivener's error. I would argue that trespass after notice was written on the ticket and he clearly meant to charge 620 but that 600 was what they - I think the officers have cheat sheets on 'em and that just could have possibly been an error on their part.

[22-24] **The Court:** And to the extent that it's necessary I want you to have a copy of 600 so you can see it. Mr. Lupton, you got any argument?

[25 to page 20, line 9] **Mr. Lupton:** Your Honor, I believe that it is inappropriate under *Gentry* to amend where the elements change or the punishment changes. And I haven't looked closely at the fine but it goes from one hundred to two hundred - excuse me. One hundred to two hundred so the punishment does change and the elements change. So under both prongs of *Gentry*, change in punishment, increase in punishment, and the fact that the elements have changed. It goes from trespass on lands to trespass on premises. 600 clearly contemplates open lands whereas 620 contemplates what we have here.

[10-12] **The Court:** All right. Let's talk about scrivener's error. Is writing the wrong statute a scrivener's error? Is there any case law on that?

[13-15] **Mr. Fernandez:** I don't have any case law on me, Your Honor. I didn't actually look that up but I have internet access, I certainly could.

[16 to page 21, line 1] **The Court:** I think we need to send the jury away and consider this issue. This case - I don't know why these cases are so hard but they are novel and difficult issues and they seem to come from both sides. I have many times held that when it is not the notice of the charge that anything else is a scrivener's error. That tends to make me believe that there is some reason that the notice of the charge matters. Further complicating this is both of them have trespass after notice in the title. One requires posting in four places, (inaudible) hogs and lands and all kind of other stuff. One requires coming on the premises. I think they have different fines. So then we start getting into if you look at the name that was written it does apply to 600. 600 has certain elements. 620 has different. Does that violate *Gentry*? I'm going to let them go. I'm going to give y'all a chance to look at that because I didn't see it coming. So, I assume Mr. Fernandez didn't. I'll give him an adequate opportunity to 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)

[10-12] **The Court:** All right. Folks, it's a little unusual to have to take significant argument on the charge but I think it's appropriate in this matter.

[13-15] **Mr. Fernandez:** Thank you, Your Honor. I appreciate and I'm just gonna do some research. I'll pull up West Law and see if there's anything.

[16-24] **The Court:** Can we be back at 12:30? The specific issues that I want addressed are, one, can the actual charge itself be a scrivener's error, any case law on that. And, secondly, assuming that that can be and enough notice was given, are the elements significantly different that it cannot be amended whether that be *Gentry* and any prodigy or any other applicable case law. I'll hear anything else you've got to argue but those are the two main questions I've got. So can we try to do it at 12:30 so we can have at least a fifteen minute head-start on the jury?

[25] **Mr. Fernandez:** Oh, yes. That should be no problem. [page 22, line 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) [6-18] **The Court:** All right. We are back on the record. Prior to leaving the defendant made a motion to dismiss the ticket for being written under section 16-11-600 and the charge that the City wants to proceed under is 16-11-620. At that time, we gave an hour and it's been a little more than an hour for the City Attorney to go to retrieve and then provide any case law he so chose to the court in considering this; and I also wanted to hear argument on several issues. The City Attorney has provided to both defense counsel and to the court a May 25th, 2011, Attorney General's opinion regarding courtesy summons which addressed many of the cases that address both tickets and indictments in general sessions court and amendments and nol crossing thereof. Mr. Fernandez, happy to hear from you.

[19 to page 24, line 12] **Mr. Fernandez:** Yes, Your Honor. The Attorney General opinion is as Your Honor is aware about ten pages I think and I chose that because it does cover the relevant case law. I know an attorney general opinion is not binding or anything like that but it does provide the case law that we were not talking about, *Gentry* being one of them. And then there's a few other cases. Even though it's a question about courtesy summons the opinion does go into indictments and tickets. The prong that I left out - I stand by my prior argument that the charge can be amended assuming the two things - one that they are similar, similar elements and then, two, that the penalties are not steeper, no steeper penalties. The third prong is that - and I did neglect to say this - but the defendant has to prove prejudice, also. So it is a burden on the defendant to prove that they are prejudiced by an amendment assuming the other two are also satisfied. So in the case at hand, I have read 600, I'm already familiar with 620. 600, they are both trespassing. They are both trespassing so the same basic principles apply. The only question is where you are trespassing, either on real property or on pasture land or whatever, however they define it. So I would argue as far as the trespasses are concerned, it's still trespassing, it's the same thing, same behavior so to speak. The penalties are different but not significantly. And I would note that it's arguably worse for 600 because the penalties under 600 although the fine amount is one hundred dollars cheaper, it does call for imprisonment up to thirty days hard labor. 620 calls for a two hundred dollar fine but only imprisonment for up to thirty days, not the hard labor element added to it. So arguably 600 has steeper penalties for someone were they to be given the maximum possible fine. On top of that I don't think prejudice is an issue. Everyone was aware of what the allegations were. We've already tried a case very similar to this. All people were present, counsel was present, the defendant herself was present at the other one, so there is no prejudice to going forward with what we all understood the facts to be. And I would note for judicial economy purposes I would just point out that we are under a Supreme Court order to get these cases done. In light of that, a dismissal here would necessarily be without prejudice so if the City were inclined to continue to pursue the charges it could and all that does is delay the inevitable which is a trial under 620. I floated that by counsel. He still indicated he was inclined to preserve his client's best argument. It's understandable, respect it, but at the end of the day I'm not sure we accomplish much by doing this. I think I succeed on the case law and certainly what I presented before but also I think there's other valid reasons to go forward with this and just finish it.

[13] **The Court:** Yes, sir, Mr. Lupton, in response.

[14-19] **Mr. Lupton:** Your Honor, obviously the Attorney General's opinion is not precedent in any way. The cases that are cited therein I would note that most of them are - predate *Gentry* so to the extent that they discuss amendments I would argue that amendments -the amendment rules have changed with *Gentry*. So, I think there are some changes with that.

[20-21] **The Court:** If you believe there to be changes, please articulate what those changes are.

[22 to page 26, line 24] **Mr. Lupton:** And that's what I'm -- post-*Gentry* in order for there to be a change it is not that the charges are similar. It's that there is no material change in the indictment or in the charging document. I think that changing from one statute to another, from one crime to a different crime, even if a similar crime, is a material change. If you look at the case law post - if you look at the case law, the - and I'm looking for the specific cite, I apologize. *State v. Guthrie* this is pre-*Gentry* but it still discusses the adding an element equals a material change. In that case you had a burglary trial. It was changed from one type of burglary to another adding a different element as to burglary but they were similar charges. It was held to be an improper material change. Another case I believe it's *Cutner* discusses changing proximity to a church, deleting church, adding proximity to a school. Again, similar charges, still under the same statute, the proximity statute, deemed to be an improper change. The opinion does list cases that state proper changes, changing to add a prior conviction making it a D.U.I., second, instead of a D.U.I, first, for example. A scrivener's error in the body of a warrant or indictment taking out surplusage, time frame where time frame is not material. This is not what we have in this case. You've got a material change, you are adding - you are taking away an element of lands, adding element premises. You are changing the type of notice that has to be given from one type of notice to another type of notice. Additionally, the punishment is changed. That's the second prong. The state has to show that it is not a material change. It is a material change. The state has to show that there's no change in penalty or at least no increase in penalty. There is an increase in penalty in this case. It goes from a hundred dollar fine to a two hundred dollar fine. Now the City can argue that that's not that big of a deal change, it's not that big of a change but it's still an increase. And case law doesn't make an exception for we allow a little bit of increase. It's there cannot be an increase. The prejudice, I would argue it is on the City to prove prejudice since they are the moving party but even if it's on the defendant I think we are prejudiced because it changes the elements we have to defend against, substantially changes them. It changes from the notice requirements and it changes where she was or was not permitted to be under the criminal statute. But regardless, even if the court finds that we cannot show prejudice, all three elements have to be met -- no change, no substantial change which this is a material change, no increased penalty. There is and the prejudice. All three have to be present. And as far as the arguing about whether or not this is scrivener's error, Your Honor, I would note that the case law that talks about scrivener's error refers to warrants, either courtesy summons warrants or regular warrants or indictments which state the elements of the offense. The case law talks about the elements and whether or not the elements state substantially in the terms of the statute or common law. Because this is a blue ticket, a uniform traffic ticket, it doesn't state any elements. All it gives is the statute. That's how we get notice. So you can't have scrivener's error as to the only thing that gives the notice. It would be different than a typo on a street address or something like that.

[25 to page 27, line 1] **The Court:** May I have the book back, please. Anything further, Mr. Lupton?

[2-5] **Mr. Lupton:** Your Honor, one last thing. I recognize that we are under a Supreme Court order but I do believe that we still have to do it correctly and I know that that's the court's desire as well.
Your honor, may we approach? ⁽⁶⁾ (bench conference)

[7 to page 28, line 10] **The Court:** Well, if this had been a month ago my answer would have been simple. They've got the right to amend it up to trial and you would have had plenty of notice although I do believe that this is a technical argument that clearly because of the discovery that was provided by the City the defendant knew that they were talking about trespass on premises. Nonetheless, both of these statutes - one which no longer exists - could be described as trespassing after notice or properly described as trespass after notice. So those words alone don't tell you what elements you face. 16-11-600 is the one involving pastures and lands and a certain level of fines, *et cetera*. 620 is another one. I know we are talking about judicial economy because we've got the jury here. Nothing is more judicially

uneconomical as trying a case and coming back and trying it again. I don't believe that any entry of a decision would preclude the City from rebringing the ticket. It is noted that the prosecutor has the sole authority to nol pros a case right up until the jury is sworn. We have impaneled and sworn - we have impaneled a jury, we've not sworn one. So whatever I rule doesn't get rid of this. However, I do believe that this does not fall under scrivener's error as it specifically states a statute and that the explanation in plain words of the statute do not give any notice that it doesn't mean the first statute, it means the second. And because of those things in tandem I am going to grant the motion to dismiss the ticket as written. And I will record it and listen to whatever is said after the recording but - I just think sitting here at this moment it creates more problems to go forward than not and the ticket was written on July in 2010 and right up until this moment it's never been amended. Could have been and hadn't. So that's where I am. So we are done for the day.

[11] Mr. Lupton: Thank you, Your Honor.

[12] The Court: All right.

(End of requested transcript of record)

[page 29] State of South Carolina

County of Richland

In the Municipal Court for the City of Columbia

City of Columbia,

vs.

Certificate

Marie-Therese Assa'ad-Faltas, Defendant.

This is to certify that the within jury selection and motions, consisting of twenty-eight (28) pages, is a true and correct transcript of record for the jury selection and motions on April 24, 2013, said transcript being prepared to the best of my ability from a recorded disc provided to me without the benefit of my being present at the proceeding. [¶] I further certify that I am not related to any of the parties in this matter or their counsel, nor do I have any interest, financial or otherwise, in the outcome of the same.

In witness whereof I have hereunto set my hand and seal on the 30th day of December, 2013.

[s/] Nancy S. Ahrens

Notary public for South Carolina

My commission expires: 03-29-19