

MAY 09 2019

BEFORE THE SUPREME COURT OF SOUTH CAROLINA ("SC")

Appellate Case No. 2018-001290

On Petition for a Writ of *Certiorari* to RICHLAND COUNTY Court of Common Pleas,
 Jean Hoefer Toal, sitting as Circuit Judge on Circuit Court Case No. 2016-CP-40-01444
Marie-Thérèse Assa'ad-Faltas, MD, MPH, Respondent,
 v.
The State of South Carolina, Petitioner.

Appellate Case No. 2019-000036

On a Mishmash of Applications by the State relative to RICHLAND COUNTY Court of Common Pleas,
 And Apparently Related to Circuit Court Case No. 2018-CP-40-01798
Marie-Thérèse Assa'ad-Faltas, MD, MPH, Respondent/*Defendant to Complaint in Original Jurisdiction*
 v.
The State of South Carolina, Petitioner/*Plaintiff in this Court's Original Jurisdiction.*

Appellate Case No. 2019-000708

On Petition for a Writ of *Certiorari* to RICHLAND COUNTY Court of Common Pleas,
 The Honorable Perry H. Gravely, Circuit Judge on Circuit Court Case No. 2017-CP-40-06831
Marie-Thérèse Assa'ad-Faltas, MD, MPH, Respondent,
 v.
The State of South Carolina, Petitioner.

Dr. Assa'ad-Faltas' AMENDED* Fourth Supplement to her Motion to Relieve Counsel in 2018-001290
COMBINED WITH: (1) Dr. Assa'ad-Faltas' Motion to Dismiss Complaint 2019-000036
AND (2) Dr. Assa'ad-Faltas' Motion to Relieve Counsel in 2019-000708

SC's Attorney General's ("SCAG") wasting public and judicial resources to validate the City of Columbia's ("the City") twenty-year obsession with torturing and humiliating Dr. Assa'ad-Faltas to no discernible public benefit, but to the continued genocide of what decency is left in SC's judicial system, **must be stopped.**

The City's torment of Dr. Assa'ad-Faltas started in 1999 with false "disorderly conduct" charge for the benefit her then-landlord Hampton Greene Apartments and United Dominion Realty, with whom Dr. Assa'ad-Faltas was involved in civil litigation in which she, thank God, ultimately prevailed *pro se*. The City deteriorated into fabricating a Polaroid to falsely convict Dr. Assa'ad-Faltas of label-swapping in 2002, the falsity of which conviction Dr. Assa'ad-Faltas again exposed, thank God, *pro se* after having been honored to orally argue *pro se* before an SC Court of Appeals panel which included now-SC-Chief-Justice Beatty. *Vide City of Columbia v. Faltas*, 2007-UP-193 (SC App, decided 26 April 2007). Undaunted by, and in retaliation for, the defeat of the 1999-2002 set of false charges, the City threw three more false criminal charges at Dr. Assa'ad-Faltas in 2003 and 2007, which she again, thank God, defeated *pro se*. The City then charged Dr. Assa'ad-Faltas with "front-yard parking" and continued to selectively and massively prosecute her therefor even after she had vacated the location of the concerned "front yard." The City reached the bottom of abuse by falsely arresting Dr. Assa'ad-Faltas on 2 December 2009 during pendency of her federal civil suit against the City and her motion (later granted by now-U.S. District Judge Childs) to add the City as a defendant in SC state court suit 2009-CP-40-02219 for *inter alia* unconstitutional takings. But God strengthened Dr. Assa'ad-Faltas to defeat *pro se* the two false harassment charges the City used a pretext to arrest her and rob her of evidence she had gathered to prove her 2009-CP-40-02219 claims; and despite ill-willed counsel being forced on Dr. Assa'ad-Faltas, she was acquitted of three more of the six false charges plus five contempt pronouncements the City added in its war against her. Able jurists have now vacated a conviction and two contempt pronouncements of Dr. Assa'ad-Faltas' as having been unconstitutionally/illegally procured by the City. SCAG's **only hope of reinstating those injustices is to force on Dr. Assa'ad-Faltas new ill-willed counsel OR excellent but over-stretched counsel.**

* The amendments conform to the new pagination of SCAG's Amended Appendix ("SCAG Am App") in 2018-001290, correct scrivener's errors, and update with intervening relevant events.

But the spirit of this Court's 27 September 2017 ORDER in SC Appellate Case 2013-000862 ("2017-09-27 ORDER") restores Dr. Assa'ad-Faltas' plenary equal rights to advocate *pro se* in all cases, civil or criminal, trial or appellate, brought AGAINST her; for what sense does it make to order otherwise? Leaving Dr. Assa'ad-Faltas (an indigent unable to pay private counsel) unable to *pro se* expose the frivolity of criminal charges brought against her, of civil suits initiated against her, and/or of appeals taken against her, regardless of case posture at trial, *promotes the very frivolity 2017-09-27 ORDER fears*. Nor did 2017-09-27 ORDER or its ancestors cite any case where Dr. Assa'ad-Faltas "frivolously" responded an appeal taken against her. Rather, the only appeal *against* Dr. Assa'ad-Faltas pending when this Court started limiting her *pro se* advocacy rights was ~~2010-153027~~; and this Court's 8 April 2011 ORDER aborted her *pro se* advocacy in that case. In the previous appeal taken against her (by the City in the fabricated Polaroid case, *supra*), she lost before the circuit court BUT prevailed before both the Court of Appeals (which reversed Judge G. Thomas Cooper, Jr.) and this Court (which denied the City's application for *certiorari* to the Court of Appeals). This Court had no basis (and never specified any) to fear that Dr. Assa'ad-Faltas would act frivolously as a respondent to any appeal.

Pro se advocacy is "the default setting" which 2017-09-27 ORDER did not explicitly reset for Dr. Assa'ad-Faltas as a respondent OR as a PCR applicant; she therefore retains the right to *pro se* advocacy in both types of cases. The Honorable Clifton Newman correctly read 2017-07-09 ORDER as leaving Dr. Assa'ad-Faltas' right to *pro se* PCR advocacy intact. When she exercised it in 2017-CP-40-06831, she prevailed *thrice* (PCR by Judges Goldsmith and Gravely, reconsideration denied by the latter.)

As no ground of experience or fear remains to disturb Judge Newman's 28 December 2018 ORDER attacked by SCAG's mishmash in this Court's original jurisdiction in Appellate Case 2019-000036, that case should be dismissed forthwith to prevent more delay of justice (almost ten years since incident).

Otherwise, SC Appellate Defense betrays its hostility to, and conflict with, Dr. Assa'ad-Faltas anew.

Recently discovered is SC Appellate Defender David Alexander's writing at p 7 of his brief in *State v. Missouri* (SC Appellate Case 2018-000057, heard 8 May 2019) that Dr. Assa'ad-Faltas was denied her *pro se* advocacy "right because [she] ... repeatedly abused the judicial system." Dr. Assa'ad-Faltas cannot canvas all SC Appellate Defense's writings for evidence of its hostility to her; but she researches published/oral argument cases on *pro se* advocacy, PCR, and/or other areas of law she seeks to advance.

City of Columbia v. Assa'ad-Faltas is not this Court's last word on *pro se* advocacy. This Court's subsequent *State v. Samuel* is irreconcilable with *City of Columbia* which may be overruled in *State v. Missouri*.

All Defender Alexander needed to do for his client was to point out that *City of Columbia* involved only a misdemeanor; thus, the seriousness of the pending charge does not affect the analysis. Mr. Alexander had no need or call to disparage Dr. Assa'ad-Faltas as a supposed repeated abuser of the judicial system when it is the latter which clearly "repeatedly" abused the former with false criminal charges.

Relief of Appellate Defense is URGENT now that SCAG's *certiorari* petition is scanned into C-Track without the appendix which belies it. SCAG disparages Dr. Assa'ad-Faltas as one who accumulates "rubbish on her property, which she did not thereafter clean up" and "threatens to undermine ... most basic and legitimate codes aimed to preserve and promote the health, safety, and welfare of citizens by forbidding the accumulation of rubbish on private property" Petition at p 6. SCAG's appendix BELIES his misrepresentation that "the facts of the underlying claim are not in meaningful dispute." *Id.* The facts are zealously disputed.

There was NO rubbish at all on the vacant lot Dr. Assa'ad-Faltas co-owns with her mother. Rather, Dr. Assa'ad-Faltas was cited and charged after the City agent, David Hatcher, decreed "trash is whatever I say trash is." And DHEC, the very state agency with the mandate and expertise "to preserve and promote the health, safety, and welfare of citizens" found no hazard in Dr. Assa'ad-Faltas' vacant lot.

What Retired Chief Justice Toal *correctly* saw in need of protection are the property rights of citizens against arbitrary and tyrannical trespass by the City and/or other entities devoid

of expertise OR JURISDICTION but armed only with contrived, sonorous clichés that are belied by the City's own refusal to "clean" the very vacant lots it owns. Am App pp 790-94.

Instead of riding on SCAG's clichés, this Court should URGENTLY consider these *mere record excerpts* to reassure SC's public that its Retired Chief Justice, serving energetically as a senior circuit judge, is NOT endangering its "welfare, health and safety" but is obeying the U.S. and SC Constitutions.

This Court should FORTHWITH relieve SC Appellate Defense and DENY SCAG's petition *because* (1) this case has no public importance (*the City itself admitted its actions are NOT for health or safety*) and/or (2) SCAG has no more right to appeal a PCR grant than a prosecutor has to appeal an acquittal.

I. A. International Property Maintenance Code ("IPMC") Does NOT Apply to Vacant Land.

Nothing in SC statutes or case law allows a municipality to *augment or expand* IPMC, which is limited by its own very definitions to **buildings** and which would oppress vacant lot owners to no useful purpose if extended to them. How, for example, could a wooded lot owner *physically* "clear the leaves, branches and debris"? And what purpose would that serve? That is *exactly* what the City agent e-mailed with copy to his supervisor and prosecution witness David Hatcher, on 8 March 2016 (Am App p 791):

O'Neill, Michael T <mtoneill@columbiasc.net>

Tue 2016-03-08 3:43 PM

To: Marie_faltas@hotmail.com

Cc: Hatcher, David

Dr. Faltas,

I wanted to let you know what I have found out. The City Of Columbia does not have any ordinances requiring the clearing of dead trees from undeveloped properties. Any undeveloped wooded lot can remain just that, undeveloped. I hope this answers your question. Thanks for your concern.



MICHAEL O'NEILL

Deputy Housing Official
City of Columbia Police Department
Code Enforcement Division
1136 Washington St, Columbia SC 29217
Phone 803 545 3439
<mailto:mtoneill@columbiasc.net>

The City Ordinance Summons 201310 (Am App pp 615-16), the sole charging document in the "underlying case," makes no mention at all of "accumulation of rubbish on private property." Rather, the purported violation's address, "324 Byron Road" is publicly listed as 0.08 acres of "commercial land" [https://www6.richlandcountysc.gov/AssessorSearch/\(S\(rrrex3gg1srbrgd1tk0eqi4k3\)\)/assessorview.aspx?id=R16406-06-27](https://www6.richlandcountysc.gov/AssessorSearch/(S(rrrex3gg1srbrgd1tk0eqi4k3))/assessorview.aspx?id=R16406-06-27) last visited 8 May 2019.

In the PCR trial, Dr. Assa'ad-Faltas testified that IPMC does NOT apply to vacant land but Attorneys Lupton and Briggs were ineffective for failure to detect and argue that dispositive point; e.g.:

PCR trial, Part I, Tr pp 35-36 = SCAG Am App pp 914-15, DIRECT EXAMINATION BY MS. MOODY:

[Tr p 35, line 22 - p 36, line 15] [22] A. This is a PCR application number 2016-CP-40-01444. [24 to Tr p 36, line 3] From the conviction under an ordinance summons, not under the sections that you mentioned. The sections that you men-

tioned when you were talking to Madame Judge are sections of the International Property Maintenance Code that -- [***] [5-6]. The International Property Maintenance Code applies only to buildings. [***] [12-15] I cannot in honesty -- on honesty answer yes, that what you went through is my PCR application because I was never convicted under those sections because those sections were not on the summons.

[16-17] Q. Okay. Well, let me put it this way. Dr. Faltas, you were convicted in municipal court, correct?

[18] A. Yes, ma'am. [***] [20] A. Unconstitutionally.

[21-22] Q. You had a trial in municipal court on April 11, 2013, correct?

[23-25] A. I had a trial by a jury that was not picked correctly and that had been tainted. In fact, Madame Judge, when she was the Supreme --

Tr. pp 42-3 = SCAG Am App pp 921-2

[Tr p 42, lines 9-10] Q. You're talking about the property charge that you went to trial on April 11th?

[11] A. Yes, ma'am. Yes, ma'am. [13-15] A. And, and I told him what I have there is just legitimately marking -- may I have the empty bucket that you have right here? Yes, ma'am.

[16] Q. You explained to him it was legitimately marking what?

[17 to p 43, line 2] A. Marking the borders of my land -- and again my is shorthand for Mother and, and my -- with, with buckets turned like this in a perfect line. *And, in fact, I made the joke that they looked like the proverbial little Chanel black dress and the white handles looked like a pearl of, of necklace.* That there is nothing under any imagination that is wrong or hazardous, *and I had also told him that my false accusers had, had called DHEC on me.* And the man from DHEC came and looked at everything and said that's fine. There is nothing hazardous; there is no code violation.

[3] Q. So, you explained to him your side of the facts?

[4] A. Yes, ma'am.

[5-7] Q. Okay, and what did he not do that you felt he should have -- do -- he should have done with your version of the facts?

[8-9] A. Okay, he never told me what the defense was going to be other than to pressure me to plead guilty.

Tr p 61 = SCAG Am Appendix p 940

[Tr p 61, lines 2-7] A. So, so, if I'm repeating myself, I rely on the very painstaking twenty-two page document that I filed and in -I, I, I - [***] --- adopt it under affirmation as all true except for typographic errors.

[8-10] Q. Okay. Now, those, he didn't make those motions. As to throughout the trial, what didn't Mr. Briggs do that you wanted him to do?

[11-23] A. I wanted him to even understand the facts of the case. The timeline, he had no idea what the timeline was. He didn't even know what the summons was. He thought that the summons was telling me what to remove and what not to remove. The only thing the summons said was when to come to court. The code section, which is not the code sections which you cited. And also previous to that, ten days before that, people from the City of Columbia had come and they had -- I remembered one other motion -- and, and had seen that I was trying to mark the property with cardboard. [***] A. They said the cardboard is improper and you have to remove it within ten days. It was gone within ten days[.]

I. B. There was NO "rubbish" on that Vacant Land, much less "accumulation" thereof.

PCR trial, Part I, Tr pp 82-84 = SCAG Am App pp 961-3: CROSS-EXAMINATION BY MS. KINARD

[Tr. p 82, lines 2-4] Q. Did he give you any other advice regarding that, with how to handle the rubbish charge, the best way he thought to handle it?

[5-6] A. Okay, please do not call it a rubbish charge. There was no rubbish on the land.

[7] Q. I understand.

[8] A. There was no allegation of rubbish on the land.

[9-13] THE COURT: Okay. Well, let's hold it. It's a zoning violation, so -- or a zoning ordinance. So, if that suits you better, let's not get hung up about going all the way back to all our contentions about no rubbish. This was a City of Columbia ordinance violation.

[14-16] THE WITNESS: Can we call it the buckets case because all the issue is that I had marked my, my, my -- the, the boundary line --

[17] **THE COURT:** Well, whatever.

[18] **THE WITNESS:** --- with those inverted buckets.

[19] **THE COURT:** Let's not get hung up on that. [***] [21] **THE COURT:** Ms. Kinard. Ms. Kinard.

[22-24] **BY MS. KINARD: Q.** What was the overall advice that Mr. Lupton gave you on how to dispose of the ordinance violation case?

[25] **A.** To plead guilty.

[Tr. p 83, line 1] **Q.** Was there any contingencies with that?

[2-15] **A.** I had told him that if he were to ask the city to drop the charges, I can meet with them and ask them even though I have the right to keep the buckets on the land and they aren't in any way nothing wrong, I would be willing to, to, to take them out or to fasten them more securely to the land to where no one can turn them over. But he never came back with anything other than he will walk me on a technicality, and he didn't ever tell me what the technicality is because if that's what he meant is that the city had no right to apply the International Property Maintenance Code to the -- to vacant land, then it's not a technicality. It's, it's, it's a valid thing that I would accept as a principled person. But he never told me what it is.

[16-18] **THE COURT:** This is all a part of, I believe, Ms. Kinard, her claim of ineffectiveness on Mr. Lupton's part for not challenging the legitimacy of these ordinances.

[19] **MS. KINARD:** I understand that, Your Honor.

[20-24] **BY MS. KINARD: Q.** What I was trying to get at, and I'll, I'll phrase it more clearly, is did Mr. Lupton present to you that the city offered to drop the charges if you cleaned up the land?

[25 to p 84, line 3] **A.** No, no, no, no, no. The city did not offer to do that, never did, he never -- or at least he never told me that. And please again don't say clean up because there was nothing dirty. The, the -- I --

[4] **Q.** That's an easy phrase. We'll move on.

C. Retired SC Chief Justice Toal *Correctly* focused on Preemption as Dispositive.

SCAG pretends *the* City is free to arbitrarily brand people's prized possessions "trash," confiscate and destroy it, and cruelly/unusually penalize "trash" owners, **all because *the* City and some others *usually* perform trash collection. That may be one of the most frivolous arguments a lawyer ever wrote.**

The purpose of preemption is the sovereign representing the larger group, having the higher interest, and having the better technical expertise in matters of universal applicability, preempts legislation/regulation that defeat the higher purpose and/or stem from lack of expertise. **That is why federal preempts state and state preempts local, *not the reverse*.** The U.S. has the Centers of Disease Control and Prevention; SC has DHEC; but *the* City has no physicians or public health professionals on its staff to provide technical expertise on health or safety. **The human body does not vary from city to city;** therefore, a municipality has no claim of superior knowledge of the subject. To the contrary, a locality is more likely to succumb to parochial interests, allowing epidemics/epizootics to arise and therefrom spread to the state or the nation. Therefore, localities are preempted from legislating, for example, the required vaccinations for children and pets. **That requires national uniformity and higher expertise.**

SC law allows municipalities to adopt, *not augment*, International Property Maintenance Code. Most relevant to this case is that, *by its own definition, the International Property Maintenance Code does NOT apply to vacant lots, only to "premises," meaning BUILDINGS and the land around them.*

Dr. Assa'ad-Faltas was criminalized for marking a boundary of the vacant lot her mother and she co-own with a series of plastic inverted buckets, of which one was admitted into evidence in the 11 April 2013 trial and another was admitted as Applicant Ex. 1 PCR, Part I, Tr. p 43, line 5 - p 45, line 22 = SCAG Am App pp 922-4 and p 90 line 25 - page 91 line 10 = SCAG Am App pp 969-10, respectively:

[Tr p 43, lines 5-7] **Q.** Okay, and what did he not do that you felt he should have -- do -- he should have done with your version of the facts?

[8-9] **A.** Okay, he never told me what the defense was going to be other than to pressure me to plead guilty.

[10] Q. So, you all never discussed the defense?

[11-18] A. Never. In fact, in another matter he said I never show my cards, not even to you. And on the -- and, in fact, it was Madame Judge when she was the chief justice of the Supreme Court, she issued an order on March 7, 2013, saying that everyone except Judge Solomon is recused, and she directed that Judge Solomon immediately hold a hearing to set the status of the cases and to also report to her every thirty days until those cases are tried.

[21-24] Q. We're, we're going to come to that, but what, if anything else, did Mr. Lumpton -- [***] Q. --- not do for you?

[25 -p 44, line 11] A. Several things. On the, on the, the March 12th hearing, which -- 2013 hearing, several times he says I have a motion to quash that ticket, to dismiss that ticket because it's improper. Not only did he not tell me what the basis of that is, when he got substituted by Mr. Briggs on short notice, he never shared that with Mr. Briggs. He knew he was putting Mr. Briggs in on short notice and, at least according to what Mr. Lupton represented to Judge Solomon several times, that there is reason to dismiss that ticket, and he wanted to make the motion to dismiss that ticket. But he never told me, and he never told Mr. Briggs.

[12-13] Q. Now, when he made the motion to Judge Solomon, were you present?

[14-20] A. He did not make the motion. He said I will have a motion to dismiss. So, I assume he did his research and found out that there is a valid reason to dismiss that ticket as procedurally defective. As they say in French, *vice de forme*, and -- but he did not share it with me, and he did not share it with Mr. Briggs, too, because a lawyer is supposed to do what's best for the client.

[21-24] Q. Okay. Well, let me just make sure I'm clear on this. When you say he did -- you knew of a motion to dismiss based on the ticket, but he didn't share with you the research. Is that the distinction?

[25] A. He didn't share with anybody -- [***] [p 45, line 2] A. -- what the basis was going to be.

[3-5] Q. Right, but what I'm basically asking you is he didn't share with you the research after he did the research on this ticket for you, for your case?

[6-8] A. Correct, not even a whisper of what the defense is going to be, which I'm entitled to know what the defense is going to be. In addition -- [***] [10-12] A. In addition, Judge Solomon asked me who the witnesses I would like, and I specifically identified John Ansell from this -- [***] [14-20] A. John Ansell from DHEC, who had come and inspected the property and in writing found that there is, there is nothing wrong that, that was there. And I specifically said to Judge Solomon I need this witness when Judge Solomon was doing the pretrial and trying -- and Mr. Lupton said no, I'm not going to call him.

[21] Q. Now, when you -- what day was this pretrial held?

[22] A. March 12, 2013, and you have the transcript.

[Tr. p 90, line 25] DR. FALTAS: I need to -- this is an exhibit here.

[Tr p 91, lines 1-2] THE COURT: Oh. Sure. That, that's your boundary things?

[3] DR. FALTAS: Yes.

[4-6] THE COURT: Yes. All right. Mark this as Dr. Faltas's exhibit, Madame Court Reporter. That will be Exhibit Number 2? [7] COURT REPORTER: 1. [8] THE COURT: 1, Exhibit 1.

[9-10] (BUCKET MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 1.)

No reasonable human defines a perfect line of identical inverted plastic buckets as trash. *The City* itself does NOT maintain *any* of the many vacant lots *it* owns. *Vide supra*. Even beyond preemption, which had been amply proven here to apply, *supra*, another important constitutional concern would justify PCR even if it were the only issue here: the Eighth Amendment. *Robinson v. California*, 370 U.S. 660, 667 (1962), held "Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold." Dr. Assa'ad-Faltas received a thirty-day sentence for the "crime" of marking her vacant lot's south boundary with a series of inverted buckets. No more need be said.

II. Ample Reasons Appear in SCAG's Amended Appendix to Affirm Grant of PCR.

A. The Last Argument Rule.

On 14 June 2017, Jurist Toal said from the bench (PCR trial Tr. Part II pp 77-8 = SCAG Am App pp

1052-53) [with emphasis added]:

And prejudice based on the appellant's right to make the final argument to the jury, that is only a right afforded to the appellant, to the petitioner here if petitioner had put up no evidence. And we've just had a big discussion within our court about whether to change that, but the court has decided not to do that. So, the present construct of the law in South Carolina is that if you put up any evidence, you don't have the final argument to the jury. The state has the final argument to the jury. So, that would not be appropriate. I, *I mention my views, Ms. Kinard, on these matters on which I'm not granting post-conviction relief so that they are available for further review if you decide to move with an appeal on the ruling I do make about post-conviction relief and Ms. Moody chooses to use some of these others as valid, additional, sustaining grounds, even though I don't adopt your arguments.*

But, on 14 June 2018, when Jurist Toal signed her order branding "all other issues raised by Applicant" "patently without merit" (last two lines of first full ¶ of p 2 = SCAG Am App p 1060), this Court had issued its final version of *State v. Beaty*, Opinion 27693 (refiled 25 April 2018) which unanimously held:

Article V, section 5 of the South Carolina Constitution limits this Court's authority to correcting errors of law and does not empower us to promulgate a procedural rule for future cases by simply issuing an opinion. Article V, section 4A, of the South Carolina Constitution prohibits this Court from adopting any rules of practice and procedure—even a much-needed rule governing the practice and procedure of closing arguments in criminal cases—without first going through the prescribed legislative process.

Currently, there is no rule governing the content and order of closing arguments in criminal cases in which a defendant introduces evidence, except for the "constitutional rule" that a defendant's right to due process cannot be violated at any stage of a trial. Consequently, trial judges must, on a case-by-case basis, ensure that a defendant's due process rights are not violated during the closing argument stage. Absent authority to formally adopt procedural rules, *our authority—and the authority of the trial court—is but to address due process considerations as they arise.* In cases in which a defendant introduces evidence, *trial judges clearly have the authority to require the State to open in full on the facts and the law and have the authority to restrict the State's reply argument to matters raised by the defense in closing. This authority remains in keeping with the trial judge's authority to ensure that a defendant's due process rights are not violated during a criminal trial.* We remain mindful of the need for clearly articulated rules governing the content and order of closing arguments in cases in which a defendant introduces evidence. The uncertainty resulting from the absence of such rules is unfortunate. We hope the day will soon come when such rules are firmly in place. (emphasis added)

A lawyer cannot be clairvoyant of future development of the law; but (s)he must advance the law and duly pursue good faith positions sought by, and probably helpful to, a client. Dr. Assa'ad-Faltas tried to challenge the last-argument rule before the trial court during her *pro se* arguments which were disowned by her counsel as evidenced by the transcript of the 25 April 2013 proceedings in the City's municipal court ("CMC") SCAAG Am App pp 524-7:

[page 48, lines 1-14] The Court: [1-9] Dr. Faltas. *** If you choose to testify then you subject yourself to cross examination. *You also lose the right to have last argument as you will have placed evidence into the record on the defendant's case.* *** Anything further [...] on that point? (emphasis added) *****

[page 50, lines 22-24] Defendant Faltas: At this point, may I just make my *Anders* argument that the last argument rule should be changed based on *Holmes vs. South Carolina*, a U.S. Supreme-

[25 - page 51, line 1] The Court: We are not going to address any last arguments at this point. We are going to take testimony.

On 13 December 2013, Dr. Assa'ad-Faltas had argued a functional constitutional approach, appeal hearing Tr. p 99, lines 7-24 and p 92, line 8 - p 93, line 9, (SCAG Am App pp 739-45) [emphasis added]:

[7-24] DR. FALTAS: And I brought up all the issues except possibly that there are no immigrants on the jury pool. But I did bring up the issue of the last argument. And what Judge Solomon had done after the jury convicted me in the property maintenance case, he withheld sentencing until all the other pending cases were finished. *** ** You will see that the sentencing for the property is also in the transcript of the assault case.

[8 to page 93, line 9] DR. FALTAS: ***** [13-19] And, in fact, Your Honor, for what it is worth, just to make my record and to preserve my issues, it might become an issue later, *I think immigrants should have the right to vote*

and should have the right to sit on juries. Otherwise, a lawful immigrant like me will never be tried by a jury of her peers. [20 to page 91, line 1] The other issue I wanted also to put for posterity is that after *Holmes v. South Carolina*, the rule that if a defendant offers evidence he does not go last, but if he does not offer evidence he can go last in the closing argument. Is the rule no longer acceptable under *Holmes v. South Carolina*? [2-8] *Now, Holmes v. South Carolina* did not address who goes first and who goes last in closing arguments in criminal trials. And in most states the prosecution goes last in the arguments in criminal trials. However, only in South Carolina a defendant can go last in closing argument if she does not offer evidence in defense. [9-14] *So this is a rule that discourages the presentation of a defense by holding a reward, because everyone knows the power of the last word, by holding a reward for the defendant to not present everything by making it possible to argue last.* [15 to page 92, line 6] So either the defendant always closes regardless of whether she presented a defense, or the prosecution always closes regardless of whether the defendant presented a defense. *But it cannot be one or the other closing dependent on whether the defendant* -- and these are issues of first impression. No one has brought them up. ***** *And, of course, they did prejudice me in that I was not allowed to have the last word because I presented a defense.* [7-11] *And, of course, I was also prejudiced because the jury pool did not contain immigrants because immigrants are not allowed.* So I can never be judged by a jury of my peers. ***** [21-25] And then in his cross-examination for me, Mr. Fernandez really tried to introduce voodoo medicine. He said, Can people get tetanus from rust? Of course not. But he was saying, Well, what if a child goes there? [page 93, lines 1-9] This is a private vacant lot of land with four corners, Do not trespass and markings. It is not a public playground. It is not a public nursery school. So the City is totally confusing the police power to regulate public establishments from the Fourth Amendment respect of the property and the rights of privacy. So they should not be there at all. They should not be legislating. They should stop harassing me.

B. The Jury Composition Issues.

PCR should have been granted on both prongs of the jury composition issue, which Jurist Toal erroneously lumped into one issue, erroneously cited the law on it, and erroneously dismissed as "patently without merit" after having reasoned, at PCR Tr. Part II, p 77 = SCAG Am App p 1052, thus:

Dis is the right to a trial of jury by her peers of immigrants and the statutory violation. That's in direct conflict with what our own Constitution and United States Constitution says about qualifications of jurors. I'm not free to go opposed to that as a trial judge. So, do not regard that as a valid issue.

The U.S. Constitution requires only that the jury be impartial and "of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law" but does NOT bar lawful aliens from sitting on a jury or even from voting in local elections; and few forward-looking localities have enabled them to do so. Parties are expected to assist the State in selecting an impartial jury. "See *Edmonson v. Leesville Concrete Co.*, 500 U. S. 614, 620 (1991) ("[The] sole purpose [of the peremptory challenge] is to permit litigants to assist the government in the selection of an impartial trier of fact"). This interest does not change with the parties or the causes. The State's interest in *every* trial is to see that the proceedings are carried out in a fair, impartial, and nondiscriminatory manner." *J.E.B. v. Alabama Ex Rel T.B.*, 511 U.S. 127, at note 8 (1994). Jurist Toal's non-provision of a reasoned written ruling defeats the purpose of requiring parties to first address their issues to the [PCR] trial court. Nor was Dr. Faltas' jury issue limited to her pioneering effort to make jury adequately representative of the community by including immigrants. The Amended PCR application filed by forced PCR counsel Moody reads (SCAG Am App p 877):

1. Trial counsel was ineffective by failing to object to/or raise prior to or during trial the following issues:
 - a. Preemption regarding the definition of rubbish prior to or contemporaneous to any discussions at trial;
 - b. the City of Columbia's Municipal Court System violates the doctrine of Separation of Powers because the City's executive branch is the same as the judicial branch;
 - c. the City's actions constituted a taking of the Applicant's land;
 - d. Applicant's right to a trial by jury of her peers of immigrants and the statutory violation as to the number of jurors required in the venire; and
 - e. Prejudice based on the Applicant's right to make the final argument to the jury.

And Circuit Judge Lee had found: **Applicant's right to a trial by jury of her peers of immigrants and the statutory violation as to the number of jurors required in the venire.** "This point was never raised pretrial, at trial, or sentencing. Therefore, this argument was not preserved for review." (SCAG Am App pp 769-770)

Dr. Assa'ad-Faltas' *pro se* PCR submissions and testimony and her oral and written arguments to Circuit Judge Lee leave no doubt that Messers. Lupton's and Briggs' oblivion to the statutorily-mandated number of forty (40) qualified *venire* jurors is prejudicial ineffectiveness. **That minimum is not a technicality but a bare necessity to ensure statistical representation of the community.**

Dr. Assa'ad-Faltas had also placed in the record evidence of Mr. Briggs continuing ignorance of that statute when, on 10-11 September 2014, in CMC, Mr. Briggs defended Apostle Johnnie L. Clark and Reverend Harriet D. Clark in CMC. SC Circuit Judge Goodstein's DENIED the Clarks' appeal mainly due to Briggs' failure to preserve issues for appeal, waiver of objections, and obsession on matters irrelevant to the case at hand. This Court later heard that case but was constrained to affirm the Clarks' convictions due to Mr. Briggs' failures to preserve issues. A commonality between the Clarks' trial and Dr. Assa'ad-Faltas' trial is: CMC failed to summon the forty (40) qualified *venire* jurors from whom to draw a petit jury. Mr. Briggs was plainly ignorant of the statute yet audibly scolded Dr. Assa'ad-Faltas for even asking him to assert it:

¹¹⁸⁻¹²⁰ **The Court:** I'm fairly well, Mr. Briggs. **We are starting to have jurors arrive. How many jurors do we have upstairs, sir?**

¹²¹ **Unidentified:** **Seventeen, Your Honor.**

¹²² ¹⁰ **The Court:** ^{page 8, line 21} **We have seventeen upstairs.** We'll take a few moments to address issues. We are not going to have a full hour to address any additional pretrial motions because **it's approximately 9:28 at the moment. We will go to 9:45 and then we are going to bring the jury down.** Starting with you, Mr. Briggs, do you have anything we need to address this morning?

¹¹⁸⁻¹²¹ **Defendant Faltas:** Your Honor, now I need to address the jury matters that -- I'm sorry, I -- nicknamed it homework and I wanted to address it and Your Honor said to wait until Mr. Briggs.

¹¹⁸⁻¹¹⁹ **The Court:** That's correct. Mr. Briggs, will you be raising the issue?

¹¹⁸⁻¹²¹ **Mr. Briggs:** I want to renew it when I make the other argument, Your Honor, and that you rule, both of them at the same time.

¹¹⁸⁻¹¹⁹ **The Court:** Thank you very much, sir. [...] **Yes, sir, court officer.**

²⁰¹ **Unidentified:** I have a total of twenty-four so far.

¹²¹⁻²⁴¹ **The Court:** ¹²¹ **All right. We have twenty-four jurors here.** ¹²²⁻²⁴¹ **We are going to bring them down and we are going to select them for this case.** Prior to doing so, is there any proposed *voir dire* questions for the jurors? Any from the state?

¹²¹ **Mr. Briggs:** One minute. Your Honor. ^{page 21, line 25 to page 22, line 11} **Mr. Briggs:** I have nothing further, Your Honor, except that I am writing the charge if you will.

¹²³⁻³¹ **The Court:** Thank you very much. Would you get the jury to come down, please, sir.

¹⁴¹ (discussion at defense counsel table:

¹⁵⁻⁶¹ **Defendant Faltas:** The statute requires forty jurors, not twenty-four. Forty.

¹⁷¹ **Mr. Briggs:** (inaudible) jurors?

¹⁸¹ **Defendant Faltas:** Yes.

¹⁹⁻¹⁰¹ **Mr. Briggs:** I'm not going to argue. You show that to me in writing.

¹¹¹ **Defendant Faltas:** I have already (inaudible).)

¹¹²⁻¹⁵¹ **The Court:** So that we are clear when the jurors come down and everyone is seated I am going to tell them the name of the case, have the defense and state introduce themselves and any potential witnesses. I am going to ask if any of them have any --

¹¹⁶¹ (discussion at defense counsel table: ¹⁷¹ **Defendant Faltas:** What happened to the subpoenas?)

¹¹⁸⁻²¹¹ **The Court:** -- Dr. Faltas, [p]lease don't talk while I'm talking because I want to make sure you can hear me.

CMC is notoriously lax in summoning jury *venire* but Mr. Briggs did not even read the statute until oral argument on the Clarks' appeal. Messers. Briggs and Shaffer were unavailable (neither had read the trial transcript) to correct Judge Lee's misapprehension that the number of *venire* jurors does not appear of record. Briggs' improper conduct sank to threatening to *physically* batter Dr. Faltas as established in this excerpt from his cross-examination of the City's witness *in the presence of the jury*:

[page 97, lines 20-21] **Mr. Briggs:** Your Honor, let me consult with my client just one minute and then I've got two or three other questions.

[22] **The Court:** Yes, sir.

[23] (Discussion at defense counsel table:

[24] **Defendant Faltas:** Don't touch me.

[25] **Mr. Briggs:** I've got a question.

[page 98, line 1] **Defendant Faltas:** Don't touch me.

[2-4] **Mr. Briggs:** Well, if you ever touch me, ***I'm going to slap you upside the head.*** Okay. You can hear the rest of the questions and then I'll ask you if you've got any more, okay?

[6] **Defendant Faltas:** You were going to ask me a question.

[6] **Mr. Briggs:** I haven't finished mine.)

Mr. Briggs also thrice yelled at Dr. Faltas to "shut up," at least once before the jury:

[page 27, line 15] (off the record discussion)

[16] **Defendant Faltas:** Am I entitled to listen?

[17-19] **The Court:** I think that your counsel -- if counsel asks to come over, that's up to your counsel whether you can be a part or not.

[20] **Mr. Briggs:** You can't help, Marie. * * * *

[24-25] **The Court:** Your counsel would like for you to go back to counsel table.

[page 28, line 1] (off the record discussion)

[2-5] **Mr. Briggs:** Your Honor. I have one other matter. I don't know how we can do it under the restraints we've had.

[6] (outburst)

[7] **Defendant Faltas:** I'm sorry. I'm sorry. He was almost ---

[8] **Mr. Briggs:** ***Shut up.***

[9] **Defendant Faltas:** When he leaned on my chair ---

[10] **The Court:** Sorry is appropriate.

[11-21] **Mr. Briggs:** ***One inch, Your Honor,*** but anyway my client feels like the case that I gave you, the last one, the ultimate issue ***is whether or not some evidence should be suppressed.*** In light of the time constraints and all the other stuff that's gone on, ***unless I had thirty or forty minutes to read that case, I would not be prepared to argue that in detail,*** but I want to put it on the record knowing that normally a motion to suppress must be done before the evidence is submitted. So I make my motion that the evidence that we talked about before on due process that with regard to entering the property. Serving the papers, *et cetera*, and their evidence, that part of it should be suppressed.

[22-25] **The Court:** ***So you are moving that everything that they they saw once they got -- any evidence acquired, everything they saw, anything they can testify about once they went on the property should not be allowed.***

PCR should have been granted on this jury composition issue.

C. The Takings Issue.

Jurist Toal did not heed developments of the law in the full year between her ruling from the bench (SCAG Am App pp 1049-53) and her two-page written order summarily branding everything else as "patently without merit." (SCAG Am App pp 1059-60)

C was the argument that the city's actions constitute taking. I suppose that would have to be an inverse taking, and our jurisprudence has really -- evolving even now about what constitutes a taking and what constitutes an inverse condemnation or an inverse taking there. The court is rehearing as we speak a case that involved a taking of a structure up your way, Ms. Moody, in connection with a criminal case where the property was destroyed. And the old law, as many of us grew up knowing it, would say that that is not a taking. It's an exercise of police power, but now the law is evolving, and our court is going to re-examine that. But at the present time, I would not be empowered, nor do I think a city judge would be empowered, to invalidate this on that basis, on the basis of a taking.

Jurist Toal meant *Carolina Convenience Stores, Inc., v. City of Spartanburg*, 398 S.C. 27, 727 S.E.2d 28 (Ct. App. 2012), and Opinion 27663 (31 August 2016), the parties to which settled between oral re-argument on 8 February 2017 and 23 August 2017, when this Court GRANTED their motion to vacate (and de-publish?) all SC courts' prior opinion in the case. *That left the law in need of clarification and stabilization which could have been provided by this case.* So, PCR should have been granted on this takings issue.

D. The Legitimacy of CMC Issue.

Jurist Toal misapprehended the likely evolution of the law as evidenced by the last argument issue, *supra*, and the particular *reality* of CMC the chief judge of which is also its clerk:

[T]he other arguments that the city's municipal court system violates the Doctrine of the Separation of Powers, that's been discarded many, many times in an array of decisions by our state supreme court and, frankly, by other courts around the country. This is a -- this separation of powers argument that moves from the concept of the city as an executive branch agency only has been dispelled, and it's dispelled in our Constitution by giving municipalities the authority to have a court system. So, I think that argument would not prevail.

No court has ever held that one person may function as both a judge and a clerk of the same court without offending the principles of separation between the judiciary and the executive. Dr. Assa'ad-Faltas' other argument was not that SC statutes do not allow municipalities to own and operate very-limited-jurisdiction courts. A statute clearly allows municipal courts to hear petty offenses but to not exercise civil jurisdiction whatsoever. Dr. Assa'ad-Faltas' position is that SC's statutes that devolve the attributes of sovereignty upon counties and municipalities *offend the federal constitutional scheme*.

E. Attorney Lupton's Sadistic Mistreatment of Dr. Assa'ad-Faltas.

Applicant's PCR Trial Exhibit 2 (SCAG Am App pp 1056-58) is an e-mail chain, authenticated at PCR Tr. Part II, p 66 = SCAG Am App p 1041, proving that "the City needs a conviction" and Lupton was willing to mistreat his then-client to give the City that conviction. SC Circuit Judge G. Thomas Cooper, Jr., in a transcribed 20 October 2010 hearing, once told Dr. Assa'ad-Faltas "I don't think there is a lawyer in this town willing to do what you want." What Dr. Assa'ad-Faltas wants is win her cases; Judge Cooper was right: no SC lawyer, except Mr. Truluck, is willing to win Dr. Assa'ad-Faltas' cases. So far, other than Mr. Truluck, all lawyers *forced* on Dr. Faltas did worse than lose her case: they threatened her with contempt and/or "harassment" prosecutions if she dared remind them of their duty to her.

IN SUM: Preemption was correctly, albeit sparsely, decided by the PCR court. Certiorari would waste judicial resources as this PCR grant is also sustainable on other grounds appearing of this record. This Court should accept Dr. Assa'ad-Faltas' *pro se* opposition to SCAG's petition for *certiorari* even as Respondent lauds Assistant SCAG ("SCAAG") James' prompt amendment of the appendix upon being alerted to its deficiencies. Should this Court still grant *certiorari*, Dr. Assa'ad-Faltas should be allowed to argue *pro se* against precedent that PCR grants should be unappealable in 21st Century SC.

PCR's historic ancestry is *ex parte* habeas proceedings (grant of which is *ipso facto* unappealable due to their *ex parte* nature). The Sixth Amendment guarantee of speedy retrial is also inevitably denied by the reality of the average three years' duration between a circuit judge's PCR grant and this Court's affirmation of that grant. That, added to the length of PCR proceedings in the PCR trial courts and to the time between the allegation and initial conviction and conclusion of direct appeals, delays exoneration of a once-unconstitutionally convicted person by constitutionally-intolerable years or even decades.

This Court Should Relieve Mr. Truluck from 2019-000708

This Court should take judicial notice of the transcript of 28 December 2018, filed in SC Appellate Case 2019-000036. There and then, Mr. Truluck truthfully reported to Circuit Judge Clifton Newman that representing Dr. Assa'ad-Faltas properly "has been exhausting." The one of only three redeeming SC lawyers who had Dr. Assa'ad-Faltas as a client should not be punished by exhausting him further.

Submitted on 9 May 2019 and served on SC's Attorney General by hand-delivery to his office, with copies served by hand-delivery to the respective offices of SC Appellate Defense and Attorney Truluck, all God so willing.

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