ORIGINAL

Volume II of III

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal, Circuit Court Judge

RECEIVED
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S.C. SUPREME COURT

Appellate Case No: 2018-001290
Lower Court Case No: 2016-CP-40-1444

MARIE ASSA'AD-FALTAS, RESPONDENT,

v.

STATE OF SOUTH CAROLINA PETITIONER.

AMENDED APPENDIX

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THE COURT: ALL RIGHT. BY STIPULATION.

(911 TAPE IS PLAYED:

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

9-1-1, WHAT IS YOUR EMERGENCY?

MS. STEELE: YEAH, THIS IS DINAH STEELE. I'M AT 600-5953. I'M LOCATED AT 300 BYRON ROAD. I'M THE OWNER OF THE BUILDING. I HAVE BEEN HAVING A PROBLEM WITH A TENANT THAT I'M EVICTING. SHE'S COME OVER HERE TRESPASSING. I'VE ALREADY SIGNED A COURTESY SUMMONS ABOUT THE TRESPASSING, AND SHE CAME OVER HERE AND HARRASSED ME AND PUSHED ON ME AGAIN. I'D LIKE AN OFFICER TO COME OVER HERE, PLEASE.

OPERATOR: OKAY. YOU SAID 300 BYRON?

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

OPERATOR: IS IT THE BYRON ROAD APARTMENTS?

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

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

OPERATOR: WHAT'S THE APARTMENT NUIMBER?

MS. STEELE: I'M STANDING OUTSIDE.

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

MS. STEELE: 300 BUILDING IS THE ADDRESS FOR THE BUILDING. 300 BYRON ROAD.

OPERATOR: IS SHE STILL THERE?

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

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

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

OPERATOR: DOES THE APARTMENT COMPLEX HAVE A NAME?

MS. STEELE: NO. THE ADDRESS IS 300 BYRON ROAD. THAT'S WHERE I'M LOCATED AT. SHE'S IN THE 304 BUILDING.

OPERATOR: AND WE ARE STANDING OUTSIDE OF THAT?

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

OPERATOR: SHE'S ON NO TRESPASS?

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

OPERATOR: ARE YOU GOING TO BE WAITING OUTSIDE?

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

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

MS. STEELE: SHE'S EGYPTIAN.

OPERATOR: EGYPTIAN?

MS. STEELE: YEAH.

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

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

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

MS. STEELE: NOT – A SKIRT AND A SHIRT.

OPERATOR: DO YOU KNOW WHAT COLOR SHIRT?

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

OPERATOR: DO YOU KNOW WHAT APARTMENT SHE WENT INTO?

MS. STEELE: YEAH, SHE'S IN APARTMENT NUMBER THREE AT 304.

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

OPRATOR: YOU SAID APARTMENT THREE IN BUILDING 304?

MS. STEELE: THAT'S CORRECT.

OPERATOR: AND –

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

OPERATOR: WHAT'S YOUR LAST NAME?

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

OPERATOR: WHAT'S THE PHONE NUMBER YOU ARE CALLING FROM?

MS. STEELE: 600-5953.

OPERATOR: OKAY. AND YOU ARE GOING TO BE WAITING OUTSIDE FOR THE OFFICER?

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

OPERATOR: AND WAS THERE ANY WEAPON INVOLVED?

MS. STEELE: NO, MA'AM.

OPERATOR: BUT YOU DID CONFRONT HER?

MS. STEELE: SHE CONFRONTED ME.

OPERATOR: OH, SHE CONFRONTED YOU?

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

OPERATOR: OAKY. ALL RIGHT.

MS. STEELE: THANK YOU.

OPERATOR: YOU'RE WELCOME.)

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

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

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

A. YES.

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

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

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

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

Q. SO –

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

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

A. I WOULD SAY IT WAS PARTLY – YEAH, YEAH. I WOULD SAY YES.

Q. YOU HAD IT BECAUSE OF THIS?

A. YES, I WAS ASSAULTED, MY MAN.

Q. AND SO – AND YOU TALKED ABOUT YOU ARE STILL ON MEDICATION FROM IT?

A. YES.

Q. AND YOU WENT TO THE DOCTOR?

A. YES

Q. AND GOT MEDICATION FOR IT?

A. YES.

Q. AND DO YOU RECALL TESTIFYING TWO MONTHS AFTER THIS AT A HEARING, IN BELIEVE IT WAS CIRCUIT COURT, PERHAPS MAGISTRATE'S COURT, A RESTRAINING ORDER HEARING?

A. YES.

Q. AND DO YOU RECALL AT THAT TIME SAYING YOU DID NOT GO TO A DOCTOR?

A. NO, I WENT IN JANUARY. I ENDED UP GOING IN JANUARY.

Q. SO YOU DIDN'T GO TO A DOCTOR –

A. NOT THAT NIGHT.

Q. YOU DIDN'T GO TO A DOCTOR UNTIL JANUARY OF 2010?

A '10, YEAH. YEAH, THAT'S WHEN I ENDED UP GOING. THIS WAS ALL –

Q. AT THE NOVEMBER, 2009, HEARING – NOVEMBER 10, 2009, HEARING—

A. I STILL HADN'T GONE TO THE DOCTOR THEN.

Q. YOU TESTIFIED THAT YOU HADN'T GONE TO A DOCTOR?

A. NO. HUH-UH, I HADN'T.

Q. YOU TESTIFIED YOU WERE NOT TAKING ANY MEDICATION?

A. NOT THEN I WASN'T, NO.

Q. SO NOT UNTIL JANUARY OR SOME TIME AFTER THAT?

A. RIGHT. THAT WAS AFTER FOUR TIMES SHE WENT TO DIFFERENT JUDGES TRYING TO GET THIS THING, THIS TRESPASS THING WHERE SHE COULD COME BACK ONTO THE PROPERTY AND I ENDED UP GOING TRYING TO – THEY WANTED ME TO GO TO SUMTER TO HAVE ANOTHER HEARING AND, LIKE I SAID, THIS ISN'T MY PLAYGROUND, I DON'T KNOW WHAT ALL THE RULES ARE BUT I WAS LIVID THAT I WAS GOING TO HAVE TO GO TO SUMTER TO DEFEND MYSELF IN COURT AND IT WAS A TRAVELING JUDGE. THAT'S WHAT I DIDN'T UNDERSTAND. AND THEN I JUST – I COULDN'T HANDLE IT ANY MORE. I JUST ABSOLUTELY – ALL THE HARRASSMENT, THE ASSAULT, JUST NON-STOP HARRASSMENT EVERY TIME I WENT THERE. SHE HARRASSED ME TO NO END ALONG WITH ALL THE TENANTS AND, YEAH, I BROKE. IN JANUARY I JUST BROKE.

Q. SO YOU BROKE IN JANUARY?

A. YES.

Q. BUT AT 7:11 ON SEPTEMBER 11TH?

A. RIGHT.

Q. SHE PUSHED ON YOU?

A. YES.

Q. OFFICER SHOWS UP ABOUT 7:20, CORRECT? THEREABOUTS?

A. YEAH.

Q. AND HE TALKS TO YOU?

A. YES.

Q. AND AFTER YOU'VE TALKED TO HIM THE STATEMENT FROM YOU IS THAT HE WRITES DOWN IS THAT YOU ARE SAYING IT WAS A VERY HOSTILE AND VERY

VIOLENTLY PUSHED.

A. IT WAS.

Q. SO IT'S CHANGED FROM JUST PUSHED ON ME TO VERY HOSTILE AND VERY VIOLENTLY AND SAID IT WAS IN THE UPPER CHEST WITH AN OPEN HAND?

A. YES.

Q. AND THE OFFICER – YOU TOLD THE OFFICER ABOUT ALL YOUR WITNESSES?

A. YES. THERE WERE TWO WITNESSES.

Q. AND THE OFFICER ONLY LISTED ONE WITNESS?

A. YES.

Q. SO YOU SAY THAT YOU TOLD EVERYBODY, TALKED TO HIM ABOUT ALL THE WITNESSES BUT HE ONLY LISTS ONE?

A. I DON'T KNOW WHAT HE WROTE DOWN BUT THERE WERE TWO WITNESSES, YES.

Q. AND YOU TESTIFIED TODAY THAT THERE WERE TWO WITNESSES?

A. THERE WERE.

Q. YOU TESTIFIED ON NOVEMBER 10TH, 2009, THAT THERE WERE THREE WITNESSES.

A. WELL, MR. CHARLIE CAME AROUND THE CORNER. I CAN'T SAY TO WHAT HE SAID HE SAW.

Q. WELL, YOU SAID –

A. HE WAS THERE. HE WAS THERE.

Q. YOU SAID UNDER OATH ON NOVEMBER 10TH, 2009, THAT THERE WERE THREE WITNESSES?

A. YES. MR. CHARLIE DID COME AROUND THE SIDE OF THE BUILDING.

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

A. NO, HE JUST TOOK MY STATEMENT.

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

A. HE DID, YES.

Q. BUT HE DIDN'T ARREST ANYBODY?

A. NO. I WAS LIVID ABOUT THAT.

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

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

MR. FERNANDEZ: YOUR HONOR, I OBJECT.

A. NO, NO, NO, ABSOLUTELY NOT.

THE COURT: OBJECTION SUSTAINED.

MR. FERNANDEZ: CAN I ARTICULATE MY OBJECTION?

THE COURT: PLEASE DO.

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

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

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

NOT MAKE AN ARREST?

A. NO, HE DIDN'T.

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

A. NO.

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

A. NO.

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

A. UH-HUH.

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

A. YEAH.

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

A. SHE VIOLENTLY STRUCK ME IN THE CHEST.

Q. ALL RIGHT .

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

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

A. YEAH.

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

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

A. SHE DID.

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

A. UH-HUH.

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

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

Q. YOU HAD NO BRUISES, NO MARKS –

A. NO BRUISES.

Q. NO BROKEN BONES?

A. NO CUTS –

Q. NO INJURIES?

A. NO BROKEN BONES.

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

A. OTHER THAN THE MENTAL.

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

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

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

A. YES.

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

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

Q. OR ANY TIME THE NEXT COUPLE OF MONTHS?

A. NOT UNTIL JANUARY.

MR. FERNANDEZ: I OBJECT. WE COVERED ALREADY.

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

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

A. NOT UNTIL JANUARY.

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

A. UH-HUH.

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

A. YES.

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

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

Q. YOU KNOW –

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

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

A. ABSOLUTELY.

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

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

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

A. AND WE DID NOT GO IN.

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

A. THAT – YEAH.

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

A. NO.

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

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

Q. SHE HIT YOU WITH IT IN THE CHEST?

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

DEFENDANT FALTAS: OKAY. OKAY. PLEASE, PLEASE.

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

A. YES, SIR.

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

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

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

A. NO.

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

THE COURT: YES, SIR.

(PAUSE)

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

A. I WAS.

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

A. I DID NOT FALL.

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

A. ABSOLUTELY.

MR. LUPTON: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU. ANY REDIRECT?

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

REDIRECT EXAMINATION BY

MR. FERNANDEZ:

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

A. SHE WAS VERY HOSTILE AND VIOLENTLY –

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

A. YES, I AM.

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

A. YES.

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

A. HE DID.

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

A. ABSOLUTELY.

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

A. YEAH, RIGHT AFTER THE ASSAULT.

MR. FERNANDEZ: THANK YOU.

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

MR. FERNANDEZ: NO FURTHER QUESTIONS.

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

RECROSS EXAMINATION BY

MR. LUPTON:

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

A. (PAUSE)

Q. THE VERY FIRST THING THAT'S IN –

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

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

A. UH-HUH.

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

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

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

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

MR. LUPTON: NOTHING FURTHER.

THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

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

MR. FERNANDEZ: THE CITY WOULD CALL CHARLENE CROUCH.

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

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

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

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

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

MR. FERNANDEZ: THANK YOU, YOUR HONOR.

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

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

DIRECT EXAMINATION BY MR. FERNANDEZ:

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

A. CHARLENE CROUCH.

Q. AND, MS. CROUCH, YOU WERE A RESIDENT OF 300 BYRON ROAD, CORRECT?

A. YES, SIR.

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

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

Q. SO SOMEWHAT RECENTLY MOVED OUT, 2011 MAYBE?

A. NO. I'VE BEEN GONE – HOW LONG? A COUPLE -- ABOUT TWO YEARS.

Q. WERE YOU LIVING AT THE APARTMENT COMPLEX IN 2009?

A. YES.

Q. AND THE DATE SEPTEMBER 11TH, 2009, DO YOU REMEMBER THAT DAY?

A. YES.

Q. AND I HAVE SOME – IF YOU EVER NEED TO REFRESH YOUR MEMORY ON CERTAIN SPECIFICS, THERE IS SOME PAPERWORK I CAN GIVE YOU BUT I WILL WORK MOSTLY OFF YOUR MEMORY. AND THAT DAY THERE WAS AN INCIDENT ALLEGED THAT OCCURRED ON THAT DAY BETWEEN – DO YOU RECALL WITNESSNG AN INCIDENT BETWEEN THE DEFENDANT, MARIE FALTAS, AND MS. DINAH STEELE MASON?

A. YES.

Q. MARIE FALTAS. ARE YOU FAMILIAR WITH HER?

A. YES.

Q. IS SHE HERE TODAY?

A. YES.

Q. IS SHE THE WOMAN THAT WAS THE SUBJECT OF THIS INCIDENT?

A. YES.

Q. DID – DESCRIBE YOUR APARTMENT LOCATION AT THIS AREA. WHERE IS YOUR APARTMENT LOCATED AT 300 BYRON?

A. WELL, WHEN I LIVED THERE I WAS IN THE 300 BUILDING AND SHE WAS IN THE BUILDING BESIDE THERE. IT WAS LIKE IN THE EVENING TIME AND SHE HAD SOME PAPERWORK IN HER HAND AND DINAH, MY EX-LANDLORD, SHE WAS ALSO OVER THERE. I WAS SITTING ON MY PATIO AND –

Q. IS YOUR PATIO ON THE SECOND STORY OR THE FIRST STORY?

A. SECOND.

Q. DID YOU HAVE A VIEW OF EVERYTHING THAT WAS GOING ON?

A. YEAH, I DID. UH-HUH.

Q. WAS THE – WHAT YOU WITNESSED, THE INCIDENT BETWEEN WHEN YOU SAW THE DEFENDANT COME UP TO DINAH STEELE AND WHEN YOU SAW WHAT EVENTUALLY HAPPENED, WAS YOUR VIEW EVER OBSTRUCTED BY ANYTHING?

A. WELL, SHE TOLD HER TO GET AWAY FROM HER AND SHE HAD SOME PAPERS IN HER HAND AND SHE WAS PUSHING THEM INTO HER CHEST.

Q. SO WHEN YOU SAY SHE YOU'RE –

A. DR. FALTAS.

Q. SO LET'S GO THROUGH THAT AGAIN SO WE JUST CLEAR UP THE RECORD A LITTLE BIT.

A. OKAY.

Q. WHEN YOU SAY SHE WAS APPROACHING HER, WHO WAS APPROACHING WHO?

A. DR. MARIE FALTAS WAS APPROACHING DINAH STEELE.

Q. AND THEN WHAT HAPPENED?

A. BASICALLY SHE TOLD HER TO GET AWAY FROM HER AND SHE WAS PUSHING. AS SHE WAS WALKING TOWARDS HER, SHE HAD THE PAPERS AND SHE WAS PUSHING THEM IN HER CHEST, YOU KNOW, TRYING I GUESS TO GIVE THEM TO HER BUT IN A SENSE SHE WAS PUSHING THE PAPERS IN HER CHEST. AND THEN ALL I KNOW THE LAW WAS CALLED.

Q. THE – HOW WOULD YOU DESCRIBE MS. FALTAS' DEMEANOR? HOW WAS SHE ACTING? DID SHE SEEM HOSTILE, DID SHE SEEM CALM, WAS SHE YELLING?

COULD YOU DESCRIBE HOW SHE WAS BEHAVING?

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

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

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

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

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

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

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

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

MR. LUPTON: OBJECTION, YOUR HONOR.

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

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

MR. LUPTON: OBJECTION TO LEADING.

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

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

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

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

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

Q. WHAT KIND OF FORCE WAS SHE USING?

A. SHE WAS FORCING WITH HER HANDS.

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

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

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

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

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

A. NO, NOT REALLY. NO.

Q. DID SHE APPEAR TO BE AGGITATED?

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

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

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

MR. LUPTON: THANK YOU, YOUR HONOR.

CROSS EXAMINATION BY

MR. LUPTON:

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

THE PAPERS, CORRECT?

A. NO, SHE WAS PUSHING THEM INTO HER CHEST. YES, SHE WAS BACKING UP BECAUSE SHE WAS PUSHING THE PAPERS INTO HER CHEST INSTEAD OF PUTTING THEM IN HER HAND.

Q. SO BASED ON YOUR OBSERVATIONS WAS MS. STEELE TRYING TO – PRIOR TO THE PUSHING AND PRIOR TO HER – DR. FALTAS TRYING TO GIVE HER PAPERS, WAS MS. STEELE TRYING TO BACK AWAY FROM HER?

A. WELL, SHE –

Q. OR WAS SHE JUST STANDING HER GROUND?

A. SHE WAS – I MEAN SHE STOOD RIGHT THERE AND SHE HAD THE PAPERS AND SHE, YOU KNOW, INSTEAD OF GIVING THEM IN HER HAND SHE PUT THEM IN HER CHEST AND SHE WENT BACK A COUPLE OF STEPS AND SHE TOLD HER TO GET AWAY FROM HER AND THEN I WENT IN AND CALLED THE POLICE.

Q. SO DURING THIS CONFRONTATION MS. STEELE DID NOT BACK AWAY FROM HER?

A. WELL, SHE KIND OF LIKE PUSHED HER BACK WHEN SHE WAS –

Q. BUT OTHER THAN THAT, I MEAN SHE DIDN'T COME RUNNING AWAY FROM DR. FALTAS?

A. WELL, LIKE I SAID, I WENT IN AND CALLED THE POLICE SO ...

Q. PRIOR TO IT. I MEAN YOU SAW THE WHOLE THING?

A. YES.

Q. AND SO SHE WASN'T RUNNING AWAY PRIOR TO HAVING PAPERS GIVEN TO HER?

A. NO, SHE WAS JUST STEPPING BACK BECAUSE, YOU KNOW, SHE WAS PUSHING THEM IN HER CHEST.

Q. BUT WAS THE STEPPING BACK BEFORE OR AFTER THE PAPERS?

A. I MEAN – I GUESS AFTER.

Q. SO SHE DIDN'T MOVE PRIOR TO THAT?

A. (INAUDIBLE).

Q. AND YOU SAID THAT DR. FALTAS WASN'T SAYING ANYTHING. DID SHE SAY SOMETHING ABOUT HERE'S THE PAPERS OR YOU GOT IT OR ANYTHING LIKE THAT THAT YOU HEARD?

A. SHE WAS – I CAN'T RECALL WHAT SHE WAS --

Q. SHE POSSIBLY SAID THAT?

THE COURT: PLEASE LET HER ANSWER FIRST.

A. I REALLY CAN'T RECALL WHAT SHE TELLING – SHE WAS TELLING HER SOMETHING ABOUT THE PAPERS BUT ALL I KNOW IS WHAT I SAW.

Q. (BY MR. LUPTON) SHE TOLD HER SOMETHING ABOUT THE PAPERS?

A. YEAH.

Q. COULD IT HAVE BEEN YOU'VE GOT IT OR YOU ARE SERVED OR SOMETHING OF THAT NATURE?

A. PERHAPS.

Q. BUT SHE WASN'T MAKING ANY THREATS, WAS SHE?

A. NO, SHE DIDN'T MAKE NO THREATS.

Q. WASN'T SAYING I'M GONNA GET YOU OR I'M GONNA, YOU KNOW – ANYTHING LIKE THAT? NO THREATS?

A. NOT TO MY KNOWLEDGE.

MR. LUPTON: NOTHING FURTHER, YOUR HONOR.

THE COURT: YES, SIR.

MR. FERNANDEZ: NOTHING.

THE COURT: YOU MAY STEP DOWN.

(WITNESS TO THE SIDE)

THE COURT: ANY FURTHER WITNESSES FROM THE STATE?

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

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

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

THE COURT: OKAY. YES, SIR.

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

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

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

THE COURT: DR. FALTAS, WE'VE DONE THIS ADVICE BEFORE. AS YOU ARE AWARE, YOU HAVE A RIGHT NOT TO TAKE THE STAND. THAT CANNOT BE CONSIDERED AGAINST YOU. YOU HAVE A RIGHT TO REMAIN SILENT. THE CHARGES STILL HAVE TO BE PROVED AGAINST YOU BEYOND A REASONABLE DOUBT. IF THE CITY FAILS TO DO THAT EVEN IF YOU DON'T TESTIFY, YOU ARE PRESUMED INNOCENT AND A NOT GUILTY VERDICT WOULD BE ENTERED. 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. SO YOU HAVE THE RIGHT TO REMAIN SILENT AND THE RIGHT NOT TO TESTIFY. WHETHER OR NOT YOU TESTIFY IS YOUR CHOICE AND YOU SHOULD CONSIDER THAT BASED UPON ANY ADVICE GIVEN YOU BY COUNSEL BUT YOU ULTIMATELY MAKE THAT DECISION. ANYTHING FURTHER, COUNSEL, YOU NEED ON THAT POINT?

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

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

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

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

MR. LUPTON: THANK YOU, YOUR HONOR.

MR. FERNANDEZ: THANK YOU, YOUR HONOR.

(RECESS)

(COURT RESUMES)

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

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

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

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

THE COURT: THAT IS GRANTED.

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

THE COURT: LET MR. FERNANDEZ SEE THEM.

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

THE COURT: NOT A PROBLEM.

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

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

ARE GOING TO BE USED.

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

THE COURT: ARE THEY ALL MARKED FOR IDENTIFICATION PURPOSES?

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

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

THE COURT: ALSO ADMITTED.

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

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 –

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

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

DEFENDANT FALTAS: THANK YOU.

MARIE-THÉRÈSE ASSA'AD-FALTAS, AFTER BEING DULY SWORN BY THE COURT, TESTIFIES AS FOLLOWS:

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

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

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

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

THE COURT: THANK YOU, SIR. YOUR WITNESS.

DIRECT EXAMINATION BY

MR. LUPTON:

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

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

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

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

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

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

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

Q. ALL RIGHT. BUT –

A. ADVANCED PHYSICS, ADVANCED CHEMISTRY AND ADVANCED BIOLOGY AND ADVANCED SOCIOLOGY.

Q. WITH REGARDS TO YOUR MEDICAL TRAINING.

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

Q. DID YOU RECEIVE A MEDICAL –

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

Q. AND DID YOU RECEIVE A MEDICAL DEGREE?

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

Q. WHAT IS M.P.H.?

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

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

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

A. OKAY. FIRST –

Q. TELL THE COURT, PLEASE, WHAT HAPPENED.

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

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

THE COURT: MR. LUPTON.

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

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

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

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

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

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

A. I –

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

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

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

Q. COMING TO THE RELEVANCE TO SEPTEMBER 11TH.

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

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

Q. RELATED TO SEPTEMBER 11TH, 2009.

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

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

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

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

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

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

FEBRUARY – AROUND FEBRUARY 14TH, 2009, THE POLICE CAME AND THEY WERE UNDER MY DOOR, UNDER MY WINDOW AND TERESA INGRAM WHO IS IN THE NEXT BUILDING WAS TALKING TO THEM. SO THE NEXT DAY DINAH STEELE AND LARRY MASON WERE THERE AND IT WAS THE WEEKEND, MAYBE (INAUDIBLE) AND THEY WERE WORKING ON THE LOCK OF THE OTHER BUILDING, OF 300. AND THEY WERE DRESSED BETTER THAN WORK CLOTHES. AND I SAID – THEY EVEN VOLUNTEERED. THEY SAID WE ARE GOING TO A BOAT SHOW AND I SAID YOU LOOK SHARP. THEY SAID WE ARE GOING TO A BOAT SHOW. I SAID, WELL, WHY DID YOU COME HERE ON A WEEKEND. THEY SAID WE ARE CHANGING THE LOCK BECAUSE TERESA INGRAM HAD – I DON'T KNOW IF THEY SAID NICKIE BUT SHE HAD GIVEN HER BOYFRIEND THE CODE AND NOW WE NEED TO CHANGE THE CODE.

Q. (BY MR. LUPTON) CONCERNING SEPTEMBER 11TH –

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

THE COURT: THIS WOULD BE 2009?

A. YES, YOUR HONOR.

THE COURT: OKAY. MARCH 3RD, 2009?

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

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

MR. FERNANDEZ: YOUR HONOR, I --

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

A. WE'LL HAVE JUMPED FROM MARCH –

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

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

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

Q. (BY MR. LUPTON) ALL RIGHT. IN –

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

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

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

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

A. ALL RIGHT. FINE. FINE.

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

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

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

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

A. OKAY. OKAY. BEFORE THAT –

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

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

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

A. YES, DEFINITELY. ALSO –

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

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

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

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

MR. FERNANDEZ: OBJECTION, HEARSAY.

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

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

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

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

A. YES.

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

A. IN NO UNCERTAIN TERMS, YES.

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

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

MR. FERNANDEZ: OBJECTION. HEARSAY AGAIN.

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

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

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

Q. SO NOW GETTING TO SEPTEMBER 11TH –

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

Q. NOW YOU RECEIVED NOTICE FROM MS. STEELE –

A. UH-HUH.

Q. THAT SHE WANTED TO COME INTO YOUR APARTMENT TO DO SOME SORT OF INSPECTION –

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

MR. FERNANDEZ: OBJECTION. HEARSAY.

A. ALL RIGHT. CHARLENE CROUCH TOLD ME.

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

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

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

A. NOT REGULAR INSPECTION (INAUDIBLE).

Q. NOW –

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

MENT IN MY ABSENCE.

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

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

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

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

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

A. ABSOLUTELY.

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

A. YES.

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

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

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

A. ABSOLUTELY. ABSOLUTELY.

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

A. YES. IN FACT –

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

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

Q. ALL RIGHT. NOW WHAT DID YOU DO?

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

Q. SO YOU ARE REFERRING TO DEFENSE EXHIBIT EIGHT?

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

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

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

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

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

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

A. NOVEMBER 9, 2009.

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

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?

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.

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

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

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

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

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

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

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.

A. YES.

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?

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

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

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

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

A. YES.

Q. AND THAT IT WAS CONSISTENT WITH THE PICTURE?

A. YES.

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

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 – ONE OF THE LIES THEY SAID ABOUT ME IS THAT I HAD PRETENDED THAT I WAS THE OWNER AND HAD THE TREE CUT.

MR. FERNANDEZ: OBJECTION.

Q. (BYMR. LUPTON) AND WE ARE JUST TALKING ABOUT SEPTEMBER 11TH.

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

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

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

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

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

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

A. ABSOLUTELY. ALSO –

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

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

A. OKAY. IN ADDITION, IN ADDITION, REMEMBER –

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

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

Q. BASED ON YOUR TRAINING AND EXPERIENCE --

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

THE COURT: I WILL ALLOW IT.

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

A. EVERYONE OF HER VERSIONS IS PHYSICALLY IMPOSSIBLE FOR SEVERAL

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

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

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

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

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

Q. FACE TO FACE. I UNDERSTAND.

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

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

EQUAL REACTION?

A. YES, YES, YES. ABSOLUTELY.

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

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

MR. FERNANDEZ: THANK YOU.

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

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

A. ALL RIGHT.

Q. THIS IS YOUR TIME TO PRESENT EVIDENCE.

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

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

A. YES.

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

A. YES.

Q. FOCUS ON THAT, PLEASE.

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

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

A. IT'S ALSO PHYSICALLTY IMPOSSIBLE FOR CHARLENE TO HAVE SEEN IT BECAUSE IT WAS ...

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

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

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

A. BETWEEN THOSE TWO.

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

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

Q. IN BETWEEN THE AIR CONDITIONER UNITS?

A. YES.

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

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

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

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

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

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

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

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

Q. (BY MR. LUPTON) WE ARE NOT TALKING ABOUT PASSMORE. WE ARE HERE ABOUT –

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

A. THANK YOU, YOUR HONOR.

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

A. I CALLED – (INAUDIBLE). IT WAS THREE HOURS. THREE HOURS –

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

A. I HAD TO CALL –

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

A. I'M SORRY.

Q. (BY MR. LUPTON) NOW DID YOU VIOLENTLY STRIKE OR SLAM –

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 --

Q. (BY MR. LUPTON) WHICH IS MY NEXT QUESTION. WHAT WAS YOUR PURPOSE IN GOING OVER TOWARDS MS. STEELE?

A. 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. 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 –

Q. WITH REGARDS TO SEPTEMBER 11?

A. UH-HUH.

Q. DID 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?

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.

Q. WHAT YOU DID WAS CONSISTENT WITH WHAT YOU HAVE SEEN IN SERVICE OF PROCESS?

A. YES, SEVERAL TIMES. AND SHE WAS VERBALLY ABUSING ME ALL THE

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

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

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

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

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

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

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

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

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

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

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

MR. FERNANDEZ: OBJECTION.

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

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

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

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

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

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

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

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

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

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

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

THE COURT: THANK YOU, SIR.

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

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

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

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

THE COURT: I DON'T THINK IT'S APPROPRIATE TO PUT ALL THAT TESTIMONY FROM ANOTHER – IF YOU WANT TO SAY SOMETHING YOU CAN SAY IT. I DON'T THIJNK IT'S APPROPRIATE TO ATTACH ANOTHER TRANSCRIPT TO YOUR TESTIMONY REGARDING MS. STEELE.

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

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

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

MR. FERNANDEZ: NO, YOUR HONOR.

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

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

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

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

THE COURT: C.D. AND THEN THERE WAS –

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

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

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

MR. LUPTON: THANK YOU, YOUR HONOR.

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

MR. LUPTON: THE DEFENSE RESTS.

THE COURT: OKAY. ANY MOTIONS AT THIS TIME?

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

MOTION. SAME ARGUMENT.

THE COURT: ALL RIGHT. IT IS DENIED. CLOSING ARGUMENTS. MR. FERNANDEZ.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: YES, SIR.

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

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

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

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

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

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

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

(MATERIAL IS MARKED AS COURT'S EXHIBITS)

(RECESS)

(COURT RESUMES)

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

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

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

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

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

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

MR. LUPTON: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU. ANYTHING FURTHER?

MR. FERNANDEZ: NO, YOUR HONOR.

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

(RECESS)

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

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

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

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

(PHOTOGRAPHS MARKED AS COURT'S EXHIBIT)

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

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

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

(PAUSE)

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

(INAUDIBLE)

THE COURT: WHO PULLED UP?

MR. LUPTON: DR. FALTAS.

THE COURT: DR. FALTAS.

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

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

(PAUSE)

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

DEFENDANT FALTAS: MAY I SIT, YOUR HONOR.

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

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

THE COURT: OKAY. PLEASE HAVE A SEAT.

DEFENDANT FALTAS: THANK YOU.

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

DEFENDANT FALTAS: I'M SORRY?

THE COURT: PLEASE LOOK AT THE PICTURES.

DEFENDANT FALTAS: THESE ARE FROM YESTERDAY? FROM

FROM YESTERDAY?

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

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

THE COURT: TODAY'S DATE. OKAY.

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

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

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

THE COURT: YES, SIR.

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

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

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

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

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

DEFENDANT FALTAS: YOUR HONOR, ONCE AGAIN I HAVE NO CONTROL OVER HIM.

THE COURT: OKAY. WE ARE NOT DOING THE CONTEMPT YET. WE ARE DOING SENTENCING ON THE UNLAWFUL ACTS.

DEFENDANT FALTAS: I HAVE A MOTION FOR A NEW TRIAL ON THE UNLAWFUL ACTS AND I DON'T KNOW IF I EVER ENDED UP GIVING YOUR HONOR SEVERAL COPIES OF FLORIDA V. JARDINES OR NEVER DID.

THE COURT: WE'LL MAKE IT A PART OF THE RECORD. HAND WHATEVER MOTION YOU'VE GOT ON A NEW TRIAL. MR. LUPTON, IF YOU'LL BRING IT OVER. DO YOU HAVE COPIES FOR MR. FERNANDEZ?

DEFENDANT FALTAS: YES, YOUR HONOR, I DO.

MR. LUPTON: YOUR HONOR, I BELIEVE THAT'S MR. BRIGGS. I DON'T HAVE MY GLASSES ON.

THE COURT: COME ON IN. COME ON IN, MR. BRIGGS. AS MR. BRIGGS IS HERE, MR. LUPTON, WHEN HE GETS UP HERE, LET HIM GET THOSE INSTEAD OF YOU AND HE'LL ADDRESS THESE ISSUES.

MR. LUPTON: YOUR HONOR, I WILL GIVE UP MY SEAT.

DEFENDANT FALTAS: BUT THAT'S AN ANDERS BRIEF.

THE COURT: SLOW DOWN, DR. FALTAS. LET MR. BRIGGS SIT DOWN. LET'S CATCH HIM UP LIKE WE CAUGHT YOU UP A FEW MINUTES AGO WHEN YOU CAME IN LATE AND THEN LET'S CONTINUE.

DEFENDANT FALTAS: YOUR HONOR –

THE COURT: JUST WAIT. MR. BRIGGS, WE ARE ON THE RECORD ON THE UNLAWFUL ACTS SENTENCING. MR. FERNANDEZ HAS MADE A RECOMMENDATION NOW TWICE. I AM GOING TO ASK HIM TO MAKE IT A THIRD TIME SO THAT YOU HEAR IT AS WELL SO THAT YOU ARE AWARE OF IT. ONCE HE DOES THAT, DR. FALTAS HAS A MOTION SHE WANTS FILED AND I'M GOING TO LET HER TELL US WHAT THAT IS AND IT SHOULD BE IN FRONT OF YOU WITH A FEW COPIES RIGHT THERE. MR. FERNANDEZ, WILL YOU STATE YOUR RECOMMENDATION AGAIN?

MR. FERNANDEZ: THANK YOU, YOUR HONOR. THE RECOMMENDATION FROM THE CITY WILL BE FIFTEEN DAYS SERVICE IN JAIL ON

THE FRONT END. THE REMAINING FIFTEEN DAYS BE SUSPENDED UPON CLEANING UP THE PROPERTY, REMOVING ALL OBJECTS LEAVING ONLY SOIL AND GRASS SUSPENDED ON CLEANING UP THE PROPERTY FOR ONE YEAR.

THE COURT: IN ADDITION TO THAT RECOMMENDATION, MR. BRIGGS, MR. FERNANDEZ PROVIDED PICTURES THAT HAVE BEEN MARKED AS A COURT'S EXHIBIT SO THAT EVERYTHING THAT I'VE SEEN IS A PART OF THE RECORD AND THEY ARE IN FRONT OF DR. FALTAS. DR. FALTAS, WILL YOU HAND THOSE TO MR. BRIGGS SO THAT HE MAY REVIEW THEM?

DEFENDANT FALTAS: I HAVEN'T FINISHED REVIEWING THEM BUT AS YOUR HONOR –

MR. BRIGGS: DO WHAT HE TELLS YOU TO DO.

THE COURT: LET MR. BRIGGS LOOK AT THEM, PLEASE.

DEFENDANT FALTAS: AS YOUR HONOR KNOWS I HAVE BEEN VERY, VERY ILL SINCE THE LAST TIME. IN FACT, I WAS ILL THE LAST TIME. I'M FACING LIFE THREATENING CONDITONS. NONETHELESS, YOU CAN SEE THAT THE GRASS HAS BEEN CUT (INAUDIBLE). THERE (INAUDIBLE) THING TO DO. YOU CAN ALSO SEE THAT THERE ISN'T A SINGLE BUCKET THAT'S INVERTED AND HOLDING WATER. THEY ARE ALL UPRIGHT AND YOU CAN SEE THAT THE LIDS ARE BACK ON. ALSO, I WANT TO SAY THAT YESTERDAY I HAILED SOMEBODY FROM THE STREET TO CUT THE GRASS AND MS. STEELE WAS THERE AND I SAID I WAS JUST GOING TO GO TO THE POST OFFICE BUT DON'T TALK TO HER AND BY THE TIME I CAME BACK THAT PERSON WITH THE TRACTOR WAS DONE. SO THANK GOD I WAS ABLE TO FIND SOMEBODY ELSE. SO IT'S JUST PHYSICALLY NOT POSSIBLE FOR ME TO HAVE DONE ANYTHING FROM THE TIME OTHER THAN TO HIRE SOMEBODY TO CUT THE GRASS. IT'S ALSO – I AM VERY UNCLEAR WHAT

IS THAT THEY DON'T WANT. HE SAYS NOTHING BUT GRASS AND DIRT. DOES THIS MEAN THAT I HAVE TO ALSO REMOVE THE SIGN THAT SAYS PRIVATE PROPERTY, NO TRESPASS. I MEAN THIS – AND YOU HAVE PLENTY OF MEDICAL EVIDENCE THAT I WAS VERY ILL AND I STILL AM. IN FACT, YOUR HONOR, I AM SCHEDULED FOR AN M.R.I. BECAUSE IT SEEMS THAT MY RIGHT KNEE HAS ALSO FRACTURED. I WOULD LIKE FOR THERE TO BE REASONABLE TIME, NO JAIL TIME, AND SOMETHING SPECIFIC AS TO WHAT IT IS I CANNOT HAVE. SOMETHING SPECIFIC. BUT REALLY, YOUR HONOR, THE PROPER WAY IS NOT TO BRING CRIMINAL CHARGES AND THEN TO SUGGEST JAIL. THE PROPER WAY IS TO GO TO CIRCUIT COURT WHICH IS NEUTRAL AND GET AN INJUNCTION. IN ADDITION, THERE IS QUESTION WHETHER THE CHARGE CARRIES JAIL TERM AT ALL. AND WE'VE BEEN THROUGH THIS AND THERE HASN'T BEEN AN INTERPRETATION.

THE COURT: IN ADDITION TO THE INFORMATION YOU PROVIDED, YOU ALSO INDICATED YOU HAD A MOTION.

DEFENDANT FALTAS: YES, YOUR HONOR.

THE COURT: WILL YOU PLEASE TELL MR. BRIGGS WHAT YOUR MOTION IS SO HE CAN ADDRESS IT.

MR. BRIGGS: YOUR HONOR, I THINK I MIGHT WOULD BE MORE HELP IF I WOULD TELL YOU WHAT THE STATUS OF US GETTING THE PLACE CLEANED UP FIRST AND THEN LET HER DO THE MOTION.

THE COURT: THAT'S FINE.

MR. BRIGGS: IT MIGHT HELP THE COURT.

THE COURT: ALL RIGHT.

MR. BRIGGS: YOUR HONOR, I APOLOGIZE FOR BEING LATE BUT I TOLD YOU I'M ONE OF THOSE GUYS THAT ALWAYS GETS CAUGHT. I TURNED

LEFT ON THE STREET, DOWN ON HUGER STREET, TO COME UP HERE WHICH HAS GREEN GOING STRAIGHT BUT RED NOT GOING LEFT?

THE COURT: YES, SIR.

MR. BRIGGS: AND I GOT CAUGHT.

THE COURT: IF YOU WOULD HAND THAT TO HER SO YOU WON'T HAVE TO LEAN OVER SO FAR AND SHE'LL GIVE IT TO ME. THANK YOU, SIR.

MR. BRIGGS: AND I ALWAYS GET CAUGHT, YOUR HONOR. I GUESS I SHOULD QUIT DOING THOSE KIND OF THINGS.

THE COURT: MADAM CLERK, IF YOU WOULD MARK THAT AS A COURT'S EXHIBIT AS WELL SO IT WILL ALSO BE ATTACHED TO THE RECORD.

(MARKED AS COURT'S EXHIBIT)

MR. BRIGGS: YOUR HONOR, I TOLD YOU THAT I WAS CONFIDENT THAT I COULD FIND A WAY OF GETTING THE PROPERTY CLEANED UP BY PUTTING EVERYTHING OUT THERE IN A STORAGE SHED, YOUR HONOR. I COULD HELP THE COURT WITH THE THING. WHAT I DID WAS WRITE THE PRESIDENT OF MY SUNDAY SCHOOL CLASS. MY CHURCH IS VERY WELL KNOWN OUT IN LEXINGTON FOR DOING BENEVOLENT STUFF. WE IN FACT HAVE THAT – I THINK I MENTIONED IT BEFORE BUT WE HAVE THAT RECOVERY PROGRAM FOR FOLKS WHO HAVE EMOTIONAL PROBLEMS – NOT JUST ALCOHOLICS. IT'S A TWELVE-POINT PROGRAM BUT IT IS NOT A CHURCH PROGRAM. THEY JUST HOLD THEIR MEETINGS IN CHURCHES USUALLY BECAUSE THERE'S FREE RENT AND THE CHURCH PROVIDES A SUPPER FOR THEM, YOUR HONOR, ON TUESDAY NIGHT. SO WE HAVE A LONGSTANDING HISTORY OF GETTING THINGS LIKE THIS DONE. MY PROBLEM IS THAT THE PRESIDENT OF MY SUNDAY SCHOOL CLASS IS IN FLORIDA ON ONE OF THOSE TOUGH ASSIGNMENTS. HE WORKS FOR ONE OF THESE LARGE

PAPER COMPANIES.

THE COURT: YES, SIR.

MR. BRIGGS: WON'T MENTION NAME BUT HE'S HAVING TO ENTERTAIN HIS CUSTOMERS ALL WEEKEND. YOU KNOW, TOUGH DUTY BUT THAT'S WHERE HE IS.

THE COURT: YES, SIR.

MR. BRIGGS: AND I CALLED HIS WIFE THIS MORNING AND TOLD HER I WANTED HIM TO READ THE E-MAIL. I'M NINETY PERCENT SURE THAT THE CHURCH WILL – MY SUNDAY SCHOOL CLASS WILL GET THE JOB DONE, YOUR HONOR, WITHIN A REASONABLE PERIOD OF TIME. AND I BELIEVE THAT TO THE CORE.

THE COURT: OKAY.

MR. BRIGGS: IN ADDITION, I CALLED MY – I HAVE TWO SON-IN-LAWS. BOTH OF THEM ARE SIX-FOUR AND BOTH OF THEM ARE IN THE BUILDING BUSINESS, YOUR HONOR. I WON'T MENTION NAMES AGAIN, THAT'S NOT WHAT IS IMPORTANT. BUT I CALLED ONE OF THEM THIS MORNING AND CALLED MY DAUGHTER ON THE OTHER ONE AND SHE COMMITTED HIM AND A PERSON FROM THE FAMILY THAT'S LIVING WITH THEM NOW THAT'S OUT OF WORK. SO I HAVE THREE VERY LARGE WARM BODIES THAT CAN MOVE THAT STUFF INTO A STORAGE ROOM. BUT THE ONLY PROBLEM I'VE GOT RIGHT NOW IS I HAVEN'T FOUND THE STORAGE ROOM YET BECAUSE I'VE BEEN BUSY DOING OTHER THINGS. BUT JUST SO THE COURT KNOWS THAT I'VE THOUGHT IT OUT VERY SERIOUSLY. I'M CONFIDENT THAT A WRECKER SERVICE THAT HAS A FLATBED UNIT, YOUR HONOR, COULD TRANSPORT ONE OF THOSE STORAGE BINS. I'M TALKING ABOUT A TEN BY TEN, HUNDRED SQUARE FEET, YOUR HONOR. SO I

PUT THAT PART DOWN AT THE BOTTOM SO THE COURT KNOWS I HAVE TWO WAYS OF GETTING THE JOB DONE, YOUR HONOR. OKAY?

AND I WON'T SAY HOW THIS SHOULD AFFECT THE SENTENCE, HOW IT SHOULD AFFECT TIME YOU WOULD GIVE US OR ANYTHING ELSE BUT I JUST WANTED THE COURT TO KNOW THAT THAT JOB WILL GET DONE. THAT MEANS THERE WON'T BE ANY ANGLE IRONS THERE, THERE WON'T BE ANY BUCKETS THERE, THERE WON'T BE ANYTHING ON THAT PROPERTY EXCEPT GRASS AND I GUESS THE PRIVATE PROPERTY SIGN AND A STORAGE BIN, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. BRIGGS: SO I GIVE THAT – AND, OF COURSE, MR. FERNANDEZ HAS A COPY OF THIS AND THAT WOULD BE MY ARGUMENT.

THE COURT: ALL RIGHT.

MR. BRIGGS: YOUR HONOR, I WOULD JUST SAY IN THE SENTENCE I'VE BEEN DOING THIS FOR MORE THAN FORTY YEARS NOW AND I CANNOT THINK OF ANOTHER CASE THAT I THINK IS LESS MERITORIOUS FOR SOMEBODY TO ASK FOR JAIL TIME BECAUSE SOME LADY JUST HAD SOMETHING STUCK IN HER CRAW AND THE CITY HAD SOMETHING STUCK IN THEIR CRAW AND HER BEING IN JAIL WON'T PROVE – I WON'T SAY A BAD WORD 'CAUSE I DON'T USE THOSE WORDS – BUT WON'T PROVE A THING, YOUR HONOR. IT WON'T PREVENT ANOTHER PERSON FROM DOING IT. IT WILL CAUSE HER A LOT OF DISTRESS AND I DID IN FACT TALK TO HER DOCTOR AND I GUESS – DID YOU GIVE HIM THE SECOND NOTE FROM THE DOCTOR? WELL, SHE'S GOT A SECOND NOTE. SHE PICKED IT UP HERSELF YESTERDAY, YOUR HONOR. JUST A COPY OF WHAT IS A INTERVIEW AND EXAMINATION OF HER SHOWED SO THAT OUGHT TO BE MADE PART OF THE RECORD

THE COURT: IF THAT SOMETHING YOU'D LIKE FOR ME TO CONSIDER, I WILL NEED IT.

MR. BRIGGS: I WILL GET IT AND I'LL MAKE IT A PART OF THE RECORD, YOUR HONOR.

THE COURT: OKAY. DO YOU HAVE IT THAT I CAN CONSIDER IT BEFORE ANY SENTENCING?

MR. BRIGGS: THERE'S NO NEED ME IN ARGUING ANY OTHER THING. I JUST – THE ONLY THING I WOULD SAY, YOUR HONOR, AND DR. FALTAS ALWAYS SAYS, WELL, YOU'RE TALKING ABOUT YOURSELF. WELL, I THINK COURTS NEED TO KNOW THE HISTORY OF PEOPLE. YOUR HONOR, I HAVE NEVER ARGUED WHAT I CONSIDER EXAGGERATIONS TO COURTS BECAUSE I THINK EXAGGERATIONS ARE LIES. THE EXAMPLE IS – AND I'VE ASKED JUDGES THIS – SOME LAWYERS WILL ARGUE SOMETHING JUST BECAUSE IT HAS A GOOD SOUND TO IT, YOUR HONOR. AND I ASK JUDGES, I SAY, JUDGE, WHAT DO YOU DO WHEN SOME GUY ARGUES SOMETHING LIKE THAT AND YOU KNOW HE DOESN'T EVEN BELIEVE IT HIMSELF. AND SOME OF THEM WON'T ANSWER THE QUESTION BUT THE JUDGES WHO ANSWER THE QUESTION SAID THEY JUST TURN THEIR CHAIR AROUND AND LOOK AT THE CEILING SO THEY WON'T LAUGH AT THEM. I TELL YOU IF I WAS A JUDGE I'D PROBABLY GO BACK IN THE BACK BUT I'D SAY, MR. SMITH, YOU DON'T REALLY EXPECT ME TO BELIEVE THAT, DO YOU. BUT ANYWAY I DON'T GET INTO THOSE KIND OF THINGS. I TRY TO REPRESENT MY CLIENTS AND, OF COURSE, WE GET OUR CLIENTS AS WE GET THEM. BUT I KNOW FOR A FACT IF I LIVE ANOTHER TWENTY DAYS OR SO THAT THAT PROPERTY WILL GET CLEANED UP AND I HAVE FOUR – THREE VERY WARM, STRONG BODIES TO HELP ME AND MY DAUGHTER IS PRETTY GOOD AT IT, TOO. SHE'S A RURAL

MAIL CARRIER. BUT WE CAN GET THE PROPERTY CLEANED UP SO WHATEVER DIFFERENCE THAT MAKES, YOUR HONOR, THAT'S FINE.

THE COURT: TWO THINGS, MR. BRIGGS.

MR. BRIGGS: YES, SIR.

THE COURT: ONE, DO YOU HAVE A COPY OF THE MEDICAL NOTE THAT YOU WANT MADE A PART OF THE RECORD? DOES DR. FALTAS HAVE IT?

MR. BRIGGS: I CAN ASK HER THAT. DO YOU HAVE A COPY? DID YOU BRING THE COPY OF IT WITH YOU?

DEFENDANT FALTAS: NO, I THOUGHT IT WAS ONLY RELEVANT TO THE CONTINUANCE WHICH WAS DENIED. I'M SORRY. BUT I PICKED IT UP YESTERDAY.

THE COURT: IT'S NOT A PROBLEM, IT'S JUST IF YOU WANTED ME TO CONSIDER IT I HAVE TO SEE IT TO CONSIDER IT.

DEFENDANT FALTAS: WHAT I'D LIKE CONSIDERED IS MY MOTION FOR A NEW TRIAL, PLEASE.

MR. BRIGGS: I'M THROUGH, YOUR HONOR AGAIN, I DID TALK TO HIM A COUPLE OF DAYS AGO. HE SAID HE WOULD SEND ME HIS NOTES FROM THAT EXAMINATION. I DON'T KNOW WHAT HE SENT BUT IT WOULD BE SUPPLEMENTAL AND BACKUP OF WHAT THE LETTER SAID, YOUR HONOR.

THE COURT: OKAY. SHE INDICATES –

MR. BRIGGS: FOR THE RECORD, I THINK IT'S MORE THAN ADEQUATE BUT I'M NOT A JUDGE, YOUR HONOR, NEVER HAVE BEEN A JUDGE.

THE COURT: IT'S MORE THAN ADEQUATE ON WHAT ISSUE?

MR. BRIGGS: ON THE QUESTION OF CONTINUANCE, YOUR HONOR.

THE COURT: OKAY.

MR. BRIGGS: THE ONLY OTHER CAPACITY I'VE BEEN A JUDGE IS I WAS AN ADMINISTRATIVE JUDGE A COUPLE OF TIMES OVER AT D.H.E.C. DOING THOSE KIND OF HEARINGS BUT I CAN'T CLAIM TO BE A JUDGE. I DON'T THINK THOSE GUYS ARE REALLY JUDGES. I DON'T KNOW WHAT YOU WOULD CALL THEM BUT ANYWAY I THANK YOU FOR YOUR TIME, YOUR HONOR.

THE COURT: THANK YOU, SIR. SHE HAS A MOTION, SIR?

MR. BRIGGS: THAT'S FINE. I HAVE NO OBJECTION TO HER DOING HER MOTION.

THE COURT: ALL RIGHT.

DEFENDANT FALTAS: SO MAY I HAND –

THE COURT: YOU MAY. YOU'VE GOT TO GET SOMEBODY TO GIVE IT TO HIM FOR YOU. ALL RIGHT. PLEASE GIVE A COPY TO ME AS WELL. PLEASE MARK THAT PLEASE.

(MOTION IS MARKED AS COURT'S EXHIBIT)

DEFENDANT FALTAS: YOUR HONOR HAD DIRECTED THAT THEY GIVE US A C.D. OF THE TRIAL BY –

THE COURT: FOR PURPOSES OF CONTEMPT, LET'S STAY ON TARGET AND DEAL WITH THIS MOTION TO RENEW FIRST.

MR. BRIGGS: YOUR HONOR, THE C.D.'S HAVE BEEN MADE AVAILABLE. I JUST HAVEN'T GOTTEN THEM YET. THEY ARE DOWNSTAIRS WHERE YOU PAY A FINE SO THEY DID MAKE THEM AVAILABLE.

DEFENDANT FALTAS: WHEN DID THEY MAKE THEM AVAILABLE?

MR. BRIGGS: THEY TOLD ME THAT ABOUT FOUR O'CLOCK YESTERDAY AFTERNOON.

DEFENDANT FALTAS: YEAH, BUT YOUR HONOR'S ORDER –

THE COURT: LET'S SLOW DOWN. YOU WANT TO MAKE A MOTION FOR A NEW TRIAL, DON'T YOU?

DEFENDANT FALTAS: YES, YOUR HONOR.

THE COURT: YOU HANDED US UP A MOTION FOR A NEW TRIAL, CORRECT?

DEFENDANT FALTAS: YES, SIR.

THE COURT: LET'S ADDRESS MOTION FOR A NEW TRIAL. GO AHEAD.

DEFENDANT FALTAS: OH, OKAY. FIRST OF ALL, OF COURSE, THIS MOTION WOULD HAVE BEEN MORE DETAILED IF I HAD THE C.D. WHICH YOUR HONOR HAD ORDERED BE AVAILABLE LAST WEDNESDAY. BUT FIRST THERE IS THE PROBLEM OF THE JURY AND UNDER GOMEZ VS. UNITED STATES WHICH IS A U.S. SUPREME COURT OPINION THERE WAS A CONVICTION. THE MAGISTRATE JUDGE HAD PRESIDED OVER VOIR DIRE AND THE U.S. STATUTE SAYS NO MAGISTRATE JUDGE CANNOT DO THAT EVEN THOUGH THE ARTICLE (INAUDIBLE) JUDGE SAID HE'D REVIEW ALL OBJECTIONS AND ALL OF THAT. I'M SAYING THAT IT IS VERY EQUIVALENT HERE. MR. -- JUDGE STEEDLEY BOGAN IS RECUSED FROM MY CASES SO HE HAD NO AUTHORITY TO PRESIDE OVER VOIR DIRE AND JURY QUALIFICATION. IN ADDITION, AS WAS PROVEN, HE MADE COMMENTS VERY DEROGATORY TO ME AND YOU CANNOT UNRING THE BELL. THAT IS SOMETHING – YOU KNOW U.S. SUPREME COURT (INAUDIBLE) AND, OF COURSE, EVEN CHIEF JUSTICE TOAL –

MR. BRIGGS: LET ME INTERRUPT. IF YOU'VE GOT ALL THAT IN WRITING, DON'T (INAUDIBLE).

DEFENDANT FALTAS: IN HER ADMINSTRATIVE CAPACITY SHE

RECOGNIZED THAT ONLY YOUR HONOR IS THE ONE WHO IS NOT RECUSED SO WHEN A JUDGE WHO IS RECUSED PRESIDES OVER VOIR DIRE AND MAKES COMMENTS THAT ARE DEROGATORY TO ME WHICH ARE FALSE IN THE PRESENCE OF THE VENIRE AND THEN THAT VENIRE CONVICTS ME I THINK I'M ENTITLED TO A NEW TRIAL. THEN I DIDN'T WANT MR. BRIGGS TO GIVE -- SUGGEST CURATIVE INSTRUCTIONS AND HE DIDN'T CONSULT WITH ME AND THE CURATIVE INSTRUCTIONS THAT HE DRAFTED REALLY MADE IT WORSE. NOW THE CITY ORDINANCE IS UNCONSTITUTIONAL UNDER LUCAS VS. SOUTH CAROLINA COASTAL COUNCIL AND UNDER OLIVER VS. UNITED STATES. YOUR HONOR, WHAT HAD HAPPENED – ALSO CHIEF JUSTICE TOAL IN HER ADMINSTRATIVE CAPACITY SAID EXTENSIONS CAN BE GRANTED TO ALLOW COUNSEL, TO ALLOW DR. FALTAS' COUNSEL, TO PREPARE. MR. BRIGGS WAS SUBSTITUTED ONLY ON THE EVE OF THE TRIAL BY FORMAL ORDER. IN ADDITION, MR LUPTON ADMITTED THAT HE HAD NOT CONSULTED MR. BRIGGS OR ME WHEN HE WROTE TO JUDGE BARBER THAT THIS WILL NOT RESULT IN DELAY.

YOUR HONOR HAS THE MEDICAL RECORDS SINCE MARCH 19TH. I HAVE EXPERIENCED SOMETHING THAT IS FRIGHTENING AND MAY BE SUGGESTIVE OF MALIGNANCY. IN ADDITION, I PROVIDED – AND THAT IS NOT MY SAY SO. I PROVIDED YOUR HONOR WITH THE PATHOLOGY REPORT WITH THE ULTRASOUNDS, WITH THE CLINIC NOTES, THE E.R. NOTES, EVERYTHING IS AS I HAD SAID TO YOUR HONOR. IT WAS – SO THIS IS A CONTINUING LIFE THREATENING ISSUE AND THERE WAS A DEATH IN MY FAMILY, SOMEONE VERY CLOSE TO MY MOTHER IN THE MEANWHILE. SO A CONTINUANCE WOULD HAVE BEEN JUSTIFIED.

NOW I'M SORRY TO MAKE THIS AND I DON'T THINK IT'S PROPER TO

MAKE IT HERE BUT I HAVE BEEN ASKING AND THIS IS AT LEAST ARGUABLE AND NEITHER MR. LUPTON NOR – AND ONE OF THE REASONS I HAD TO ASK MR. LUPTON FOR SUBSTITUTION IS THAT AFTER WE'VE BEEN BEFORE YOUR HONOR AND, OF COURSE, ALL OF THIS IS IN THE FRAMEWORK OF THAT MY RIGHT TO SELF-REPRESENTATION HAS BEEN DENIED. HAD I BEEN REPRESENTING MYSELF, NONE OF THIS WOULD HAVE HAPPENED BECAUSE ALL THE TIMES I REPRESENTED MYSELF, EXCEPT ONE TIME, I GOT EXONERATED, THANK GOD, AND THAT ONE WHICH IS STILL ON APPEAL ON FEDERAL HABEAS DID NOT CARRY JAIL TIME. SO, THIS IS SOMETHING TO KEEP IN CONSIDERATION THAT DENIAL OF THE RIGHT TO SELF-REPRESENTATION IS STRUCTURAL, MEANING IT DOESN'T MATTER IF THERE IS EVIDENCE OF GUILT OR NOT, IT'S STRUCTURAL. YOU CAN'T GET PAST IT. IT CAN NEVER BE HARMLESS. BUT ONE ARGUMENT I'VE BEEN MAKING AND NEITHER MR. BRIGGS NOR MR. LUPTON WANTED TO MAKE BECAUSE, FRANKLY, THEY DO NOT UNDERSTAND IT. I'M SORRY. IT'S NOT THAT IT'S FRIVILOUS OR ANYTHING AND LET ME TELL YOUR HONOR AT LEAST FIVE ARGUMENTS I HAD MADE PRIOR TO THEIR BECOMING LAW. ONE IS ON FEDERAL TITLE VII. I HAD MADE AN ARGUMENT THAT IT PROHIBITS –

THE COURT: IS THE TITLE VII ARGUMENT RELEVANT TO THIS MOTION FOR A NEW TRIAL.

DEFENDANT FALTAS: NO.

THE COURT: PLEASE STICK TO THE ARGUMENTS THAT ARE RELEVANT TO THE MOTION FOR A NEW TRIAL.

DEFENDANT FALTAS: OKAY. OKAY. THE STATE – THERE ARE TWO SOVERIGNS IN THE FEDERAL SYSTEM -- THE FEDERAL GOVERNMENT AND THE STATE GOVERNMENT. IN JINKS VS. RICHLAND COUNTY, SOUTH CAROLINA

THE U.S. SUPREME COURT SAID A CITY OR A COUNTY IS NOT SOVERIGN. IT FOLLOWS FROM THAT THAT IT CANNOT MAKE LAWS, IT CANNOT HAVE ITS OWN COURTS AND I KNOW THAT'S AN ARGUMENT ALMOST ANTIEXISTENTIAL FOR YOUR HONOR. YOU KNOW THAT THE CITY OF COLUMBIA COURT CANNOT BE BECAUSE IT'S NOT ONLY A SOVERIGN, STATE AND FEDERAL, CAN HAVE A COURT. ALSO, THE CITY OF COLUMBIA HAS NO RIGHT TO CRIMINALIZE CONDUCT THAT IS NOT CRIMINAL THROUGHOUT THE STATE AND THAT IS CLEAR IN BEACHFRONT ENTERTAINMENT VS. TOWN OF SULLIVAN'S ISLAND. WHETHER THE STATE LAW PRE-EMPTED THE FIELD OR NOT IT'S A STRAIGHT EQUAL PROTECTION ANALYSIS AND ALSO A MATTER OF THE SOUTH CAROLINA CONSTITUTION. IT IS NOT A CRIME ANYWHERE ELSE IN SOUTH CAROLINA TO HAVE PLASTIC OR TO HAVE RUSTED POLLS OR TO HAVE ANYTHING ONE WISHES TO HAVE. SO AGAIN NONE OF THAT WAS ARGUED BEFORE BECAUSE EITHER MY COUNSEL PREVIOUSLY AND THE SUBSTITUTED COUNSEL WERE UNWILLING TO STUDY THE LAW OR JUST, YOU KNOW, ANYTHING I SAY. YOU KNOW. OKAY. SO NOW MR. FERNANDEZ PROSECUTED THIS CASE AND UNDER STATE LAW, UNDER STATE LAW, NO ONE CAN PROSECUTE A CASE IF THEY ARE ALSO PARTY OR REPRESENT A SIDE IN A CIVIL LAWSUIT. THE CITY ATTORNEY – I HAVE CIVIL LAWSUITS AGAINST THE CITY. THE CITY ATTORNEY REPRESENTS THE CITY IN THE CIVIL LAWSUITS AND ALSO PROSECUTES THIS – PROSECUTED THIS. AND THIS ONLY – THE ELECTED SOLICITOR CAN PROSECUTE AND CRIME CAN ONLY BE IN THE NAME OF THE STATE. THIS IS THE CITY SO IT CANNOT EVEN PROSECUTE.

NOW BECAUSE THE CITY APPOINTS YOUR HONOR AND RE-APPOINTS AND THEY ARE AN ADVERSE PARTY, THIS DENIES ME DUE PROCESS

AND I HAD MADE THAT ARGUMENT BEFORE AND MARION HANNA HEARD IT AND SHE SAID, NO, WE HAVE JUDICIAL INDEPENDENCE AND BLAH, BLAH, BLAH, AND THEN SHE LATER HAD SOME DISCIPLINE BECAUSE OF HOW SHE TREATED ME.

THE COURT: NOW IS THAT RELEVANT TO THIS MOTION FOR A NEW TRIAL?

DEFENDANT FALTAS: YES, YES, YES. BECAUSE UNDER WARD VS. MONROEVILLE, TRAPERTON VS. MASSEY, GIBSON VS. BERRYHILL AND LIPTY VS. UNITED STATES WHICH ARE ALL UNITED STATES SUPREME COURT CASES I CANNOT BE PROSECUTED BY THE COURT OR AGENT OR APPOINTEE OF SOMEONE WHO IS ADVERSE TO ME IN CIVIL LITIGATION. ALL (INAUDIBLE) ALSO UNCONSTITUTIONAL AND ALSO, YOUR HONOR, THEY KEPT ON SAYING WATER COLLECTS AND IT ALLOW MOSQUITOES TO BREED. YOU KNOW, THEY SAY THE NATIONAL BIRD OR THE STATE BIRD OF MINNESOTA IS THE MOSQUITO. MOSQUITOES BREED IN LAKES, IN STREAMS. THE FLAT SURFACE OF A MAILBOX, THE FLAT TOP OF A CAR, THE LEDGE, EVEN THE TRASH CANS THAT THE CITY ITSELF HAS OUT ON THE STREET COLLECT WATER. SO THAT ARGUMENT IS SPECIOUS. WHAT IS SANITARY OR NOT IS DETERMINED AND ALSO PRE-EMPTED BY THE STATE HEALTH DEPARTMENT AND IN THIS CASE IN THE PROFFER THEY COMPLAIN TO THE STATE HEALTH DEPARTMENT AND SOMEONE, JOHN ANSEL, AND THAT'S WHY I NEEDED TO SUBSTITUTE MR. LUPTON BECAUSE THIS WAS A CRITICAL WITNESS. HE CAME AND SAID THERE IS NOTHING UNSANITARY. AND I NEEDED – IN THE FIRST PRETRIAL YOUR HONOR SAID THAT YOU WILL ISSUE THE SUBPOENA AND MR. LUPTON AGREED TO SERVE IT. THEN THE SECOND PRETRIAL HE SAID, NO, I DON'T WANT TO SUBPOENA EVERYONE, AND THAT WAS A KEY WITNESS. SO THAT DEPRIVED ME OF A FAIR TRIAL.

NOW THE JURY VENIRE, THE STATUTE REQUIRES AT LEAST FORTY PEOPLE. WE DIDN'T HAVE FORTY PEOPLE. AND THE REASON IT'S NOT ONLY TO ALLOW SUFFICIENT STRIKES, BUT TO HAVE A REPRESENTATION OF THE COMMUNITY. AND THIS IS AGAIN A STRUCTURAL THING. YOU CAN SAY, YOU KNOW, IF THERE IS OVERWHELMING EVIDENCE OF GUILT IT DOESN'T MATTER THAT THE JURY WASN'T REPRESENTATIVE OR THAT THE JURY WAS AFFECTED OR ANYTHING LIKE THAT.

AND THEN – THIS IS EXACTLY PROVEN HERE. OVER MY OBJECTION I WAS TRIED FOR THINGS THAT POSTDATE THE SUMMONS. THE SUMMONS WAS GIVEN TO ME AND I THINK WE'VE BEEN OVER THIS DURING THE TRIAL FOR THE CARDBOARD CYLINDERS EARLY IN OCTOBER, 2011, AND WITHIN TEN DAYS THEIR OWN PICTURES SHOW THAT WHEN THEY CAME BACK THOSE CARDBOARDS WERE GONE. THEY NEVER, EVER GIVE ME ANOTHER SUMMONS SAYING REMOVE THIS OR REMOVE THAT. IN ADDITION WHEN THEY CAME IN THERE WAS A NOTICE ON ALL FOUR SIDES, NO TRESPASS, AND FLORIDA VS. JARDINES – DID I FINALLY GIVE IT TO YOUR HONOR?

THE COURT: YOU CITED IT.

DEFENDANT FALTAS: WOULD YOU LIKE A COPY?

THE COURT: YOU CAN PROVIDE A COPY. I'LL MARK IT AND MAKE IT A PART OF THE RECORD.

DEFENDANT FALTAS: THANK YOU.

THE COURT: PLEASE MARK THAT AS A COURT EXHIBIT, PLEASE.

(FLORIDA VS. JARDINES MARKED AS COURT'S EXHIBIT)

THE COURT: PLEASE CONTINUE.

DEFENDANT FALTAS: AND THERE WAS NO PICTURE OF ANY

WATER IN ANYTHING AND THERE WAS NO PICTURE – IN FACT, HE SAID THERE WERE NO MOSQUITOES. BUT THE PICTURES SHOW THEM COMING BEYOND THE NO TRESPASS LINE AND, YOUR HONOR, WATER COLLECTS IN POTHOLES. IN FACT, THEIR OWN PICTURES SHOWED THE NEIGHBOR HAD THE GRASS VERY TALL. THAT CAN ALSO BREED MOSQUITOES. IT'S NOT THE MATTER OF SELECTIVE PROSECUTION, IT'S NOT CORRECT THAT IT'S NOT A DEFENSE. THERE ARE FOUR U.S. SUPREME COURT CASES THAT SAY THAT PROSECUTORIAL DISCRETION IS NOT UNLIMITED. THE CASES – AND I'M SORRY THEY AREN'T HERE BUT THEY ARE UNITED STATES VS. ARMSTRONG. JUSTICE MARSHALL SAID IT'S BEYOND DOUBT THAT PROSECUTORIAL DISCRETION IS NOT UNLIMITED. BUT THE PICTURES THAT THEY BROUGHT FROM OCTOBER, THEY ARE CLOSE RANGE AND FLORIDA VS. JARDINES SAYS, NO, YOU CANNOT ENTER SOMEBODY'S PROPERTY TO COLLECT EVIDENCE OF A CRIME. SO THAT'S WHAT THEY DID. THE OTHER THING IS THERE WAS NEVER AN INJUNCTION AND THIS COURT DOESN'T HAVE CIVIL JURISDICTION. IF THERE HAD BEEN AN INJUNCTION, WRITTEN INJUNCTION, SAYING WE FOUND "A," "B," AND "C" TO BE UNSANITARY AND YOU ARE REQUIRED PROSPECTIVELY TO REMOVE IT WITHIN A CERTAIN THEN, YES, THEY CAN BRING SOMETHING (INAUDIBLE). BUT I THINK THEY WOULD ADMIT, IF THEY HAVE BEEN STALKING ME, THAT THIS GRASS IS FRESHLY CUT. AND THE MOST IMPORTANT THING I'D LIKE YOUR HONOR TO COMPARE IS HOW THIS LAND WAS BEFORE WE BOUGHT IT. IT WAS A JUNGLE.

THE COURT: I WANT TO MAKE SURE I UNDERSTAND YOU. WHO DID YOU SAY STALKING?

DEFENDANT FALTAS: WELL –

THE COURT: I JUST WANT TO MAKE SURE I KNOW WHO IS

STALKING YOU.

DEFENDANT FALTAS: WELL, OBVIOUSLY AGENTS FOR THE CITY.

THE COURT: OKAY.

DEFENDANT FALTAS: I MEAN THAT HAS GONE BEYOND ANY RHYME OR REASON.

THE COURT: OKATY.

DEFENDANT FALTAS: AND THE SELECTIVE PROSECUTION HERE IS NOT ONLY A MATTER OF VINDICTIVENESS, BUT ALSO A MATTER OF LIKE THEY HAVE BIG POTHOLES RIGHT NEXT DOOR WHICH WOULD COLLECT MORE WATER. IT'S (INAUDIBLE) ON THE GENUINENESS OF THE PRETEXT THAT THIS IS WHAT THEY HAVE IT FOR. AND EVEN IF YOU SEE THEIR OWN PICTURE HERE, THIS CORNER WHERE THE OTHER PROPERTY HAS THE – LIKE THE TOP ONE CORNER OF THE FIRST PAGE THE STONES WITH THE –

MR. BRIGGS: WHAT EXHIBIT NUMBER IS IT?

DEFENDANT FALTAS: WELL, IT'S ONLY ONE EXHIBIT SO IT'S NUMBER THREE. IT SAYS DEFENDANT'S EXHIBIT NUMBER THREE BUT THIS IS NOT THE DEFENDANT'S –

THE COURT: THEY ARE COURT EXHIBITS. THE RECORD IS CLEAR.

DEFENDANT FALTAS: I'M SORRY. SO THE FIRST PAGE IF YOU SEE HERE THIS STONE STRUCTURE HAS NO DRAINAGE.

THE COURT: HAVE YOU GONE BEYOND YOUR NEW TRIAL MOTION AND ARE ARGUING WHAT'S IN THE PICTURES OR IS IT STILL RELATED TO YOUR NEW TRIAL MOTION?

DEFENDANT FALTAS: IT'S RELATED TO THE NEW TRIAL MOTION THAT THAT PRETEXT THAT THINGS THAT HOLD WATER CANNOT BE, HERE IS A

PERMANENT STRUCTURE THAT'S TWO FEET DEEP THAT HAS NO DRAINAGE AND THAT HOLDS TWO FEET OF WATER. THERE IS NO WATER IN ANY OF THOSE PICTURES. WHAT THERE IS IS GRASS THAT WAS FRESHLY CUT YESTERDAY WHICH SHOWS THAT I'M MAINTAINING IT ACCORDING TO THE RULES ESTABLISHED.

MR. BRIGGS: GO AHEAD AND FINISH, MARIE.

DEFENDANT FALTAS: AND ON THE OTHER SIDE THERE IS ALSO IF YOU SEE THE OTHER PROPERTY IT'S GOT A LOT OF CONTAINERS THAT ARE – ALL RIGHT. I'VE SAID THE NEW TRIAL MOTION AND – I'M SORRY.

MR. BRIGGS: HAVE YOU GOT SOME MORE DOWN HERE OR DO YOU JUST NEED TO MAKE YOUR SUMMARY?

DEFENDANT FALTAS: THAT'S – I FINISHED, YOUR HONOR. I'M SORRY, I DIDN'T MEAN TO TAKE LONGER.

THE COURT: NOT A PROBLEM. THANK YOU FOR YOUR TIME. OFFICER HAMPE, CAN I GET YOU TO STAND UP, SIR. WOULD YOU RAISE YOUR RIGHT HAND.

T. R. HAMPE, AFTER BEING DULY SWORN BY THE COURT, TESTIFIES AS FOLOWS:

QUESTIONS BY THE COURT:

Q. OFFICER HAMPE, ONE ISSUE THAT HAS BEEN RAISED AND ONE THING THAT HAS ASKED OF ME TO DO PREVIOUSLY WAS TO QUESTION YOU AS TO WHAT YOU SAID TO JUDGE BOGAN WHEN HE SELECTED HIS JURY – WHEN JURY SELECTION WAS GOING ON. CAN YOU PLEASE TELL ME WHAT YOU SAID TO JUDGE BOGAN?

A. YES, SIR. I TOLD HIM, INFORMED HIM THAT, IF HE WAS UNAWARE, THAT A

COUPLE OF YEARS AGO THAT MS. FALTAS CAME IN AND THAT SHE KEPT THE JURY PANEL LIST WITH ALL THE JURORS NAMES AND ADDRESSES ON IT AND I SAID I BELIEVE SHE WAS IN CONTEMPT OF COURT AND I BELIEVE SHE WAS INCARCERATED FOR THAT. I DIDN'T SAY SHE WAS, I SAID I BELIEVE SHE WAS, YOUR HONOR.

Q. THANK YOU VERY MUCH. DID YOU SAY ANYTHING ELSE?

A. NO, SIR.

THE COURT: THANK YOU VERY MUCH.

DEFENDANT FALTAS: YOUR HONOR, MAY I ASK THAT THE COURT ASK HIM ONE QUESTION?

THE COURT: YOU MAY ASK THAT I ASK HIM, I'M NOT SURE THAT I WILL.

DEFENDANT FALTAS: OKAY. MAY I ASK IF HE CAME ON HIS OWN ACCORD OR IF SOMEONE TOLD HIM TO.

Q. (BY THE COURT) DID ANYBODY TELL YOU TO DO THAT?

A. NO, SIR.

THE COURT: THANK YOU VERY MUCH.

DEFENDANT FALTAS: WELL, YOUR HONOR, OBVIOUSLY THAT INFORMATION WAS FALSE BECAUSE I PROVIDED YOUR HONOR –

THE COURT: WE'VE BEEN THROUGH IT. I WANTED TO MAKE SURE I MADE A FULL RECORD. I HAVE HEARD THE MOTION FOR A NEW TRIAL. IT IS DENIED. NOW WE ARE DOWN TO THE POINT OF SENENCING. MR. FERNANDEZ, I THINK I COMMENDED YOU THE LAST TIME YOU MADE A SUSPENDED SENTENCE MOTION AND THAT YOU WERE TRYING TO COME UP WITH A CONCLUSION TO RESOLVE THE CASE OR RESOLVE THE ISSUE AT THE PROPERTY AS OPPOSED TO –

I THINK YOU EVEN AT THAT TIME SAID I'M NOT TRYING TO PUT HER IN JAIL. MR. BRIGGS, I COMMEND YOU BECAUSE YOU HAVE SENT E-MAILS AND SOLICITED PEOPLE TO COME UP WITH A SOLUTION ON CORRECTING THE PROBLEM AND GETTING A SHED AND GETTING THE STUFF IN THERE. I'M NOT HERE TO SENTENCE MR. FERNANDEZ OR MR. BRIGGS. I'M HERE ABOUT DR. FALTAS. AND ALL THAT I HEAR FROM DR. FALTAS IS WE DON'T HAVE THE AUTHORITY TO BE HERE, IT'S UNCONSTITUTIONAL, THE STUFF IS NOT WHAT THEY SAY IT IS TO BE AND IF YOU ARE GOING TO TELL ME TO DO SOMETHING THEN I NEED EVEN GREATER SPECIFICITY ON WHAT THAT MEANS. SAYING GRASS AND DIRT IS NOT ENOUGH, I NEED TO KNOW EXACTLY WHAT THEY WANT ME TO DO. FOR THE REASONS OF MY CONCERN ABOUT MY ABILITY TO PROPERLY DRAFT A SUSPENDED SENTENCE THAT WOULD BE CLEAR ENOUGH SO THAT WE WOULDN'T HAVE MISUNDERSTANDINGS AND ALLEGED AMBIGUITIES, THE COURT IS NOT GOING TO DO A SUSPENDED SENTENCE. THE COURT IS GOING TO DO THE FOLLOWING. I AM GOING TO IMPOSE A SENTENCE OF THIRTY DAYS. I AM GOING TO GIVE THE DEFENDANT THE OPPORTUNITY AT THE CONCLUSION OF WHAT ELSE TAKES PLACE HERE TO FILE A NOTICE OF APPEAL AND I WILL IMMEDIATELY HAVE A HEARING ON AN APPELLATE BOND SO THAT ALL THAT CAN BE ADDRESSED BEFORE WE LEAVE TODAY AND ASSUME BOND POSTED DR. FALTAS DOES NOT HAVE TO START ANY OF HER SENTENCE UNTIL THE APPEAL IS CONCLUDED. AND IF SHE'S RIGHT ON ONE OR MORE OF THE ISSUES THAT SHE'S RAISED THEN THAT WILL TAKE CARE OF ITSELF AT THAT TIME.

DEFENDANT FALTAS: THANK YOU.

THE COURT: SECOND ISSUE IS THAT OF THE CONTEMPT. HAVE Y'ALL EVEN GOTTEN THE C.D. YET?

MR. BRIGGS: YOUR HONOR, I WAS CALLED YESTREDAY AFTERNOON AND TOLD THAT IT WAS HERE BY MS. HAWKINS AND SHE SAID SHE WOULD LEAVE IT DOWNSTAIRS WHERE YOU PAY FINES. I JUST DIDN'T HAVE A CHANCE TO GO BY THERE.

THE COURT: FOR THE SAKE OF NOT COMING BACK SOLELY, I AM GOING TO RELIEVE THE CONTEMPT FINDING AND JUST END THAT ISSUE. I AM NOT GOING TO GET INTO WHETHER YOU SHOULD HAVE HAD THE C.D. BY NOW. WE ARE JUST GOING TO PULL IT AND THAT WILL KEEP US FROM HAVING TO GET YOU THE C.D. AND THEN COME BACK AND ARGUE IT.

NOW LET'S MOVE TO – TO THE EXTENT NECESSARY BECAUSE IT WAS A MOTION MADE PREVIOUSLY AT SOME OTHER POINT IN THESE PROCEEDINGS, I DON'T FIND ANYTHING TO BE ETHICALLY A VIOLATION THAT REQUIRES ANY REPORTING BY THE COURT.

NOW LET'S MOVE TO THE SIMPLE ASSAULT. MR. FERNANDEZ, MR. LUPTON, WHOEVER NEEDS TO GO FIRST.

MR. FERNANDEZ: YES, YOUR HONOR, I THINK IT'S APPROPRIATE FOR THE COURT TO HEAR FROM THE VICTIM. I'LL LET HER ADDRESS THE COURT AND, AS I SAID BEFORE, I AM PERFECTLY HAPPY WITH THE COURT'S BEST DISCRETION FOR SENTENCING.

THE COURT: YES, MA'AM, MS. STEELE.

MS. STEELE: AS I'VE TESTIFIED I'VE BEEN HARRASSED, ASSAULTED AND THIS HAS BEEN GOING ON FOR BASICALLY YEARS BECAUSE THE TRIAL KEPT BEING DELAYED. I NEED IT TO STOP AND WHEN I CAME HERE TODAY KNOWING THAT THIS WAS THE 24TH -- 25TH THAT THIS WAS GOING TO BE THE END OF IT. HOWEVER IT PLAYED OUT, THIS WAS GOING TO BE THE END, I

DIDN'T HAVE TO DEAL WITH THIS ANYMORE. I DON'T FEEL LIKE THAT. I DON'T FEEL LIKE THIS IS EVER GOING TO STOP NOW. WHAT SHE'S BEEN SAYING IN COURT AND I'M NOT AN ATTORNEY, I'M NOT A JUDGE, BUT WHAT I HEARD HER SAY WAS IF I FILE A LAWSUIT AGAINST THE CITY OR THE STATE THEN THEY CAN'T CHARGE ME WITH ANYTHING, THAT I'M ABOVE THE LAW. THAT'S WHAT I HEARD. AND WE ARE A NATION OF LAWS AND THE LAWS DO APPLY TO HER BUT SHE SOMEHOW DOES NOT FEEL THAT WAY. I JUST WANT TO BE LEFT ALONE. AND JUST AS SHE SAID, WHEN I WAS IN COURT YESTERDAY WHERE I WAS SUPPOSED TO BE AND SHE WAS NOT HERE AND AFTER COURT I WENT TO MOW MY GRASS AND SHE BRINGS THAT UP LIKE SOMETHING HAPPENED OVER THERE. ALL I HAVE TO DO IS SHOW UP ON MY PROPERTY AND THERE'S SOME WILD CONSPIRACY GOING ON. IT NEEDS TO STOP. I WANT SOME RELIEF. THANK YOU.

THE COURT: THANK YOU, MA'AM. MR. LUPTON.

DEFENDANT FALTAS: YOUR HONOR, MAY I SPEAK FOR MYSELF ON THAT?

MR. BRIGGS: YOU WAIT.

THE COURT: I'M GOING TO LET YOU SPEAK FOR YOURSELF. YOU HAVE GOT TO DECIDE WHETHER THAT'S IN YOUR BEST INTEREST OR NOT BUT I'LL LET YOU DO IT. MR. LUPTON.

MR. LUPTON: YOUR HONOR, FIRST OF ALL, I DON'T THINK IT WAS EXPLICITLY STATED BUT JUST FOR THE SAKE OF PRESERVING THE RECORD WE'LL ASK THAT THE – HER LEGAL ARGUMENTS CONCERNING JURISDICTION OF THE COURT AND ALL THAT BE PRESERVED AS PART OF THE RECORD IN THIS CASE.

THE COURT: SO PRESERVED FOR THE SIMPLE ASSAULT CASE AS

WELL AND SO DENIED. CONSISTENT WITH THE LAST RULING.

MR. LUPTON: THANK YOU, YOUR HONOR. WITH REGARDS TO SENTENCING, YOUR HONOR, IN LISTENING TO THE TRIAL, LISTENING TO EVERYTHING THAT HAS OCCURRED IN THIS CASE AND THE VARIOUS OTHER CASES, INCLUDING MS. STEELE'S COMMENTS TO THE COURT, WHAT I SEE IS THE UNWANTED TOUCHING IN THIS SITUATION THAT LED TO THE CONFICTION PRODUCED NO PHYSICAL INJURY. I UNDERSTAND HER ANXIETY, THE BREAKDOWN SHE DESCRIBED TO THE COURT THAT OCCURRED LATER, HER FRUSTATION, ALL OF THAT STUFF, BUT I WOULD NOTE FOR THE COURT THAT EVEN WHAT SHE SAID TODAY RELATES NOT TO THE SPECIFIC INSTANCE OF THE ASSAULT BUT TO HER FRUSTRATION OVER EVERYTHING. THE INJURY FOR THE TOUCHING PRODUCED NO PHYSICAL INJURY. THE EMOTIONAL SCARS THAT SHE'S DESCRIBED ARE FROM CHARGES THAT HAVE BEEN TO COURT, SHE'S BEEN NOT CONVICTED FOR VARIOUS REASONS. IT'S MATTERS OUTSIDE THIS SPECIFIC CASE AND I'D ASK THE COURT NOT TO IMPOSE A THIRTY-DAY ACTIVE JAIL SENTENCE BASED UPON CIRCUMSTANCES THAT WERE NOT DIRECTLY RELATED TO THE ASSAULT OR THE SEVERITY OF THE ASSAULT. THE ASSAULT WAS THE SERVING A PAPER. HAVING SAID THAT, I AM ALSO SYMPATHETIC WITH HER DESIRE TO HAVE NO FURTHER CONTACT. I WOULD ASK THE COURT TO CONSIDER THAT WHATEVER SENTENCE THE COURT IMPOSES THAT THE COURT SUSPEND THAT SENTENCE UPON NO CONTACT, DIRECT OR INDIRECT, WITH THE VICTIM OR HER HUSBAND, INCLUDING GOING UPON THE PROPERTY, EITHER 300 OR 304 BYRON STREET HERE IN COLUMBIA. I BELIEVE THAT THAT IS – THE COURT CAN GIVE NOT COMING WITHIN A HUNDRED FEET OF THEM, HOWEVER THE COURT DEEMS APPROPRIATE, BUT I THIHNK THAT THAT WOULD GIVE THE

OPPORTUNITY FOR SOME – WHAT SHE'S ASKED FOR, THE NOT BEING BOTHERED. PUTTING DR. FALTAS ---

DEFENDANT FALTAS: ENOUGH.

MR. BRIGGS: WAIT A MINUTE. HE'S GOING TO GIVE YOU CHANCE.

DEFENDANT FALTAS: MR. LUPTON, THIS IS NOT SERVING MY INTERESTS AT ALL. OKAY?

THE COURT: THANK YOU, MR. LUPTON.

DEFENDANT FALTAS: ALL RIGHT.

THE COURT: DO YOU HAVE ANY FURTHER ARGUMENT.

MR. LUPTON: YOUR HONOR, I WOULD SAY THAT PUTTING HER IN JAIL IS GOING TO GIVE AT MOST TWENTY-ONE DAYS OF RELIEF IF IT WORKS. HAVING THAT SENTENCE SUSPENDED WILL GIVE HER A GREATER PERIOD OF RELIEF AND IF IT DOESN'T WORK THEN THE SENTENCE CAN BE IMPOSED.

THE COURT: THANK YOU, MR. LUPTON.

MR. LUPTON: THANK YOU, YOUR HONOR.

THE COURT: YES, MA'AM.

DEFENDANT FALTAS: YOUR HONOR, I'M SORRY. MR. LUPTON HAD SPECIFICALLY TOLD ME THAT BECAUSE HE'S FORMER FRIENDS OF THE SOLICITOR'S OFFICE PROSECUTED ME AND, FIRST OF ALL, JUST –

MR. BRIGGS: DO WHAT YOU NEED TO.

DEFENDANT FALTAS: DON'T TOUCH ME.

MR. BRIGGS: DO WHAT YOU NEED TO. DO WHAT YOU NEED TO AND DON'T GO OFF THE SUBJECT.

DEFENDANT FALTAS: DON'T TOUCH ME, OKAY? WHEN HE SAYS NOT WITHIN A HUNDRED FEET FROM HER, THAT'S MY LAND. MY LAND WHICH

THEY WANT ME TO MOVE THINGS FROM WHICH I WAS YESTERDAY THERE CUTTING THE GRASS, IT'S TWO FEET FROM HER PROPERTY. HUNDRED FEET WOULD GET SOMEBODY ELSE'S LAND. THERE HAS NEVER BEEN ANY ALLEGATION OF ANY OTHER ASSAULT IN THE FOUR YEARS. THERE HAVE BEEN TWO TRESPASS CHARGES OF WHICH I WAS ACQUITTED. THERE HAS BEEN ONE DISORDERLY CONDUCT OF WHICH I WAS ACQUITTED. WHAT'S MOST IMPORTANT ALL THESE HARRASSMENT LIES I WAS ARRESTED ON DECEMBER 2ND, 2009. THERE WAS A FIVE DAY JURY TRIAL BEFORE THE HONORABLE CLIFTON NEWMAN. ALL THESE LIES WERE SAID. I WAS NOT GIVEN DISCOVERY. IN FACT, SHE SAT HERE AND SAID SHE'S STILL TAKING MEDICATION. WHEN I WANTED TO – AND I TESTIFIED TO THAT. WHAT YOUR HONOR NEEDS TO KNOW IS THAT ALL THIS HARRASSMENT HAS BEEN BROUGHT. I WAS ARRESTED. I SERVED THREE DAYS. I WAS MADE TO BE MENTALLY EXAMINED. THERE WAS A TRIAL WHERE THE ENTIRE MIGHT OF THE STATE HAD ALL THE TIME TO GIVE ITS EVIDENCE. THEY LISTED THIRTY-SIX WITNESSES AND THE JURY DIDN'T BELIEVE ANY OF IT. SO THEY CANNOT – IT'S NOW DISMISSED WITH PREJUDICE. THEY CANNOT COME BACK JUST BECAUSE MR. LUPTON DOESN'T LIKE ME AND HE KEEPS ON SAYING I SYMPATHIZE WITH HER. HE SHOULDN'T BE SYMPATHIZING WITH HER. HE SHOULD BE SYMPATHIZING WITH ME AND THAT'S WHY I'VE BEEN SAYING FROM THE BEGINNING I DON'T WANT HIM. AND ONCE AGAIN THIS IS MY (INAUDIBLE) BUT WHAT WAS I CONVICTED OF? WAS I CONVICTED OF HARRASSMENT? NO, I WAS ACQUITTED OF HARRASSMENT. SHE SAYS SHE WANTS THIS TO STOP. WHAT DOES SHE WANT TO STOP? HERE IS MR. FERNANDEZ SAYING I HAVE TO GO TO MY LAND EVERY DAY AND MAKE SURE THERE IS NO WATER. AND THEN MR. LUPTON SAYS SHE HAS TO BE A HUNDRED FEET FROM HER. WELL, AS I SAID

MY LAND IS TWO FEET FROM HER AND THAT'S THE ISSUE IS ALL OF THIS.

WHAT YOU NEED TO LOOK AT, I NEVER HAD AN ASSAULT CONVICTION BEFORE. THERE WAS NEVER AN ASSAULT CONVICTION AFTER THAT AND THIS HARRASSMENT THAT KEEPS ON BEING BROUGHT IS RES JUDICATA AND ONE THING THAT MR. LUPTON IS VERY INEFFECTIVE AND I WOULD LIKE IF YOUR HONOR TO ORDER THAT. IN THE TWO BANKER'S BOXES I BEGGED HIM BECAUSE I SAW THEM. THERE IS THIS SHEET WHERE SHE SIGNED THE VICTIM'S IN DECEMBER, 2009, AFTER I WAS ARRESTED AND IT SAID DO YOU HAVE PSYCHOLOGICAL PROBLEMS. SHE SAID NO. DO YOU NEED MEDICAL ATTENTION? SHE SAID NO. SHE SAID I'M STILL TAKING MEDICATION. I ASKED MR. LUPTON ASK HER WHAT MEDICATION, WHO PRESCRIBED IT. THE OTHER DAY IN THE FIRST TRIAL SHE SAID, NO, SHE'S NOT BIASED AGAINST ME BECAUSE I'M AN IMMIGRANT AND SHE CLAIMS SHE'S AN IMMIGRANT. I BEGGED MR. LUPTON TO GET THE CITY TO SUBPOENA HER. THESE ARE OBJECTIVE THINGS. THESE ARE LIES. BUT EVEN AS (INAUDIBLE) IT'S YOUR CHOICE TO BELIEVE THEM. ALL I HAVE BEEN CONVICTED OF IS A SIMPLE ASSAULT THAT I NEVER HAD HAPPEN BEFORE. THEY DO NOT ALLEGE ANY ASSAULT AFTER THAT. IN FACT, I AM THE ONE WHO IS ALLEGING THEY CAME AND ASSAULTED ME. SO IN THE FOUR YEARS YOU NEED TO TAKE INTO ACCOUNT THAT THIS IS A FIRST OFFENSE, NEVER REPEATED. THE HARRASSMENT HAS BEEN TRIED AND I AM ACQUITTED OF IT. THEY CANNOT JUST KEEP ON BRINGING ON ME MORE RESTRICTIONS TO MY LIBERTY, MORE DAMAGES, BECAUSE AFTER THEY HAVE LOST IN COURT THEY JUST GET HERE TO SEE IT AND WHAT IS SUPPOSED TO BE MY LAWYER LETS THEM. NOT ONLY LETS THEM, HE STANDS HERE AND SAYS I'M SYMPATHETIC TO HER. THIS IS NOT ONLY INEFFECTIVE ASSISTANCE, THIS IS

COUNSEL WORKING AGAINST ME. AND I SPECIFICALLY WANT AND I WANT TO ASK HIM TO PLEASE LOOK AT THAT PAPER BECAUSE IT'S IN THIS COURT'S RECORDS AND SHE LIED TO YOUR HONOR BECAUSE SHE SIGNED THAT VICTIM STATEMENT WITH THE SOLICITOR'S OFFICE AND THEN THEY REMANDED IT HERE AND IT'S IN THERE. DID YOU SUFFER PSYCHOLOGICAL EFFECTS? NO. SO THIS IS FRAUD UPON THE COURT. BUT IF YOUR HONOR MAKE IT SO BASIC, SO BASIC, IT'S A SIMPLE ASSAULT. I HAVE NO RECORD OF ASSAULT, NO RECORD OF ANY CRIME FOR THAT MATTER. THERE IS NO ALLEGATION THAT IT EVER HAPPENED AGAIN. SHE SAYS SHE WANTS TO BE LEFT ALONE. WELL, THERE IS NO ALLEGATION THAT I DID ANYTHING TO HER AFTER THAT DATE. OTHER ALLEGATIONS BEFORE AND AFTER THAT DATE HAVE BEEN TRIED AND I'VE BEEN ACQUITTED OF THEM. SO SHE CANNOT WIN FOR LOSING JUST BECAUSE MY COUNSEL HATES ME.

THE COURT: MR. FERNANDEZ.

MR. FERNANDEZ: YOUR HONOR, I FEEL COMPELLED (INAUDIBLE) I HAVEN'T HEARD AND I'M GOING TO GIVE MR. LUPTON AN OPPORTUNITY TO SPEAK TO THE COURT, TOO, BECAUSE I KNOW HE'S LIKE TO. THE DEFENDANT'S UNAPOLOGETIC. SHE'S DEFIANT. I HEARD THAT AND I'M CONVINCED THAT THE PROBLEMS AREN'T GOING TO GO AWAY FOR MS. STEELE. SHE'S VERY CONSUMED WITH THE LIVES OF OTHERS AS YOUR HONOR CAN LIKELY TELL. MY RECOMMENDATION IS – I'M FINE WITH WHAT THE COURT DOES – BUT, YOU KNOW, IT'S TROUBLING. THE BEHAVIOR IS TROUBLING AND I DON'T KNOW WHAT THE ANSWER IS QUITE FRANKLY, YOUR HONOR, AND I DON'T KNOW WHAT AN APPROPRIATE MESSAGE IS. I CAN CERTAINLY SAY, NOT THAT THIS IS RELEVANT TO THE SENTENCING, BUT HER COUNSEL I THINK HAS BEEN

EXTRAORDINARILY EFFECTIVE QUITE FRANKLY. AND I COMMEND HIM ON HIS REPRESENTATION, THAT IS MR. LUPTON, BUT I KNOW HE WANTS TO MAYBE CLARIFY SOME THINGS. BUT I'M TROUBLED BY HER SPEECH HERE. SHE SEEMS TO HAVE – DOESN'T REALLY GRASP WHAT THIS IS ALL ABOUT AND DOESN'T SEEM TO HAVE TAKEN ANY KIND OF RESPONSIBILITY HERE.

THE COURT: YES, SIR.

MR. LUPTON: YOUR HONOR, I FEEL COMPELLED TO ADDRESS SOME OF THE ISSUES FOR THE RECORD. I'D LIKE TO NOTE THAT THE QUESTIONS ABOUT DOCUMENTS THAT ARE IN A BANKER'S BOX. I DO NOT BELIEVE – I DID NOT ASK FOR ANY OF THAT TO BE RETRIEVED AND BROUGHT DOWN. I DO NOT BELIEVE IT'S RELEVANT. THE VICTIM ON THE STAND ADMITTED UNDER CROSS EXAMINATION, I IMPEACHED HER WITH THE FACT HER TESTIMONY ABOUT THE STILL ON MEDICATION FROM THIS, THAT SHE HAD NOT GONE UNTIL AT LEAST JANUARY OF 2010. SO A DECEMBER, 2009, FORM WOULD NOT BE RELEVANT. SHE ADMITTED UNDER OATH THAT AT THAT POINT SHE HAD NOT SOUGHT ANY TREATMENT. I DID NOT DO THAT. I DID NOT SEE ANY RELEVANCE TO IT. I STAND BY THAT. THE COURT WAS AWARE OF THAT INFORMATION.

WITH REGARDS TO THE ACCUSATIONS THAT ANY PERSONAL FEELINGS I HAVE TOWARDS DR. FALTAS HAVE CAUSED ME TO ACT AGAINST HER MAKING ME INEFFECTIVE BECAUSE I WAS ACTING AGAINST HER BEST INTERESTS TRYING TO GET HER CONVICTED, THOSE ARE ALLEGATIONS THAT SHE'S RAISED IN MULTIPLE E-MAILS THAT I'VE BEEN ORDERED BY VARIOUS JUDGES TO SEE HER CONVICTED AND BRING UP AND RE-HASH AND REOPEN THE HARRASSMENT ALLEGATIONS. I WOULD CATEGORICALLY DENY ANY OF THAT. I WAS NOT TOLD BY ANYONE TO COME IN HERE AND TRY AND SABOTAGE HER

CASES. HAD I BEEN TOLD BY ANYONE, ANY JUDICIAL AUTHORITY TO DO THAT AS AN OFFICER OF THE COURT I WOULD HAVE BEEN COMPELLED TO REPORT THAT AND I WOULD HAVE CERTIANLY NOT DONE SO. I HAVE AT ALL TIMES REGARDLESS OF ANY FEELINGS I HAVE ABOUT DR. FALTAS, OR ANY OTHER CLIENT, I HAVE DONE MY DUTY AS AN ATTORNEY DILIGENTLY AND TO THE BEST OF MY ABILITY. I HAVE IN THIS CASE – AT THIS STAGE I DON'T FEEL LIKE I CAN GO INTO ANYTHING EVEN THOUGH A LOT OF THIS HAS BEEN BROADCAST BY DR. FALTAS THROUGH VARIOUS PARTIES BY E-MAIL BUT I WILL JUST SAY THAT I HAVE DONE MY BEST. AND I WOULD SAY THAT IS REFLECTED BY THE FACT THAT OUT OF THE FOUR CHARGES THAT I TOOK TO TRIAL FOR HER, I GOT SUCCESSFUL CONCLUSIONS ON THREE OF THEM. AND AS FAR AS THE HARRASSMENT INFORMATION I HAD GOTTEN THAT EXCLUDED FROM THE TRIAL IN THIS CASE. THAT INFORMATION WAS –

DEFENDANT FALTAS: SO WHY DOES IT COME IN IN SENTENCING? THAT'S A MATTER OF PUBLIC RECORD. THE HARRASSMENT WAS RESOLVED IN MY FAVOR.

THE COURT: THANK YOU, MR. LUPTON.

MR. LUPTON: YOUR HONOR, I WOULD LIKE TO CONCLUDE BY SAYING THAT IT WAS THE DEFENDANT'S DECISION TO GO INTO ALL THOSE PRIOR ALLEGATIONS. IN FACT, SHE WAIVED JURY TRIAL BECAUSE, AS SHE PUT ON THE RECORD SO I DON'T FEEL THIS IS A VIOLATION OF ATTORNEY-CLIENT PRIVILEGE, SHE EXPLAINED THAT SHE WANTED TO GO INTO ALL THAT AND BECAUSE A JURY TRIAL WOULD HAVE BARRED THAT THAT SHE VOLUNTARILY WAIVED THAT RIGHT TO VOLUNTARILY GO INTO ALL HARRASSMENT ALLEGATIONS. SO TO SAY THAT I'M –

DEFENDANT FALTAS: NO, MR. LUPTON, THAT'S NOT WHAT HAPPENED.

THE COURT: WE ARE GOING TO END THIS RIGHT NOW. THANK YOU, MR. LUPTON. DR. FALTAS, I WAS ONCE TOLD WHEN I WAS A YOUNG MAN THE PROOF IS IN THE PUDDIN'. I DON'T KNOW SAID WHAT TO MR. LUPTON AND WHEN. I KNOW THAT HE HAS REPRESENTED YOU ZEALOUSLY AND ON YESTERDAY WHEN YOU DIDN'T SHOW HE WENT OUT OF HIS WAY TO TRY TO FIND REASONS THAT YOU WEREN'T HERE, INCLUDING CALLING HOSPITALS, ET CETERA, UNTIL HE LOCATED WHERE YOU WERE BECAUSE HE DID NOT WANT THE COURT TO TAKE ANY ACTION AGAINST YOU FOR NOT BEING HERE. HE THEN REPRESENTED YOU WELL. EVEN HAVING CHARGES READ TO THE JURY NOT TO HOLD THINGS AGAINST YOU – I MEAN. I APOLOGIZE. ON THE DISORDERLY I TRIED THAT. EVEN --- WE READ IT BUT THEN I ENDED UP ADDRESSING IT. I'M SORRY. WE DID THE FIRST CASE BENCH TRIAL. HE MADE ARGUMENT FOR THERE BE A CHARGE TO GO TO THE JURY ON THE SECOND ONE BUT THEN HE MADE A MOTION AND GOT THE CHARGE KICKED OUT SO THE SECOND JURY NEVER EVEN GOT TO SEE THE CHARGE. SO IF HE'S AGAINST YOU, HE'S HIDING IT PRETTY GOOD SO I'M JUST GOING TO LEAVE IT AT THAT. THAT'S WHAT I OBSERVED. I DON'T KNOW WHAT YOU KNOW, I DON'T KNOW WHAT HE KNOWS. I DO KNOW THAT HE'S BEEN EFFECTIVE AND I DO KNOW THAT HE PERSUADED ME THAT YOU WERE NOT GUILTY OF DISORDERLY CONDUCT ON LEGAL GROUNDS AND I AGREED WITH IT AND FOUND YOU NOT GUILTY AND HE GOT THE OTHER CHAGE DISMISSED BECAUSE OF LACK OF ISSUE ON THE INDICTMENT, THINGS HE DID NOT HAVE TO RAISE AND YOU WOULD HAVE NOT EVEN SEEN IT IF HE HADN'T BECAUSE YOU WEREN'T HERE. BUT THAT'S THAT. MR. BRIGGS, DID YOU HAVE

SOMETHING YOU'D LIKE TO SAY BEFORE YOU START?

MR. BRIGGS: LET ME ASK HER A QUESTION AND THEN I'LL DO IT.

(PAUSE)

MR. BRIGGS: YOUR HONOR, IF I COULD JUST THREE SENTENCES AS A FRIEND OF THE COURT. YOUR HONOR, THIS WHOLE THING, ALL OF THIS DISCUSSION BETWEEN DR. FALTAS AND THE CITY STARTED WITH THE ALLEGATIONS OF MASON AND HIS WIFE ABOUT THE HARRASSMENT. AND I LOOKED AT ALL THE PICTURES, I HEARD ALL THE TAPE RECORDINGS ALTHOUGH I DID NOT REPRESENT HER IN THERE AND, YOUR HONOR, IF THE PAPARAZZI CAN DO WHAT THEY CAN DO, SHE CAN DEFEND HERSELF FROM SOMEBODY WHO IS HARRASSING HER. TO ME THOSE TWO HARRASSMENT CHARGES WERE THE MOST HENIOUS THING I'VE EVER SEEN IN FORTY-THREE YEARS OF LAW PRACTICE. EVENTUALLY THEY WERE DISMISSED.

DEFENDANT FALTAS: THEY WERE RESOLVED IN MY FAVOR.

MR. BRIGGS: SHE WON ONE OF THEM IN CIRCUIT COURT AND THEN THEY WERE DISMISSED, YOUR HONOR. IT CONTINUES. IT CONTINUES, THIS ANAMOSITY HERE. AND I DON'T KNOW WHY (INAUDIBLE) --

DEFENDANT FALTAS: IT DOESN'T CONTINUE. I HAVEN'T DONE ANYTHING TO THEM. I HAVEN'T DONE –

MR. BRIGGS: SHUT UP. YOUR HONOR, I WOULD ASK THIS. THE COURT ASKED MR. HERNANDEZ WHEN AT ANY TIME DURING THIS TIME DID DR. FALTAS DO ANYTHING EXCEPT DEFEND HERSELF WHEN OTHER PEOPLE TRIED TO HARRASS HER?

THE COURT: MR. FERNANDEZ IS NOT A WITNESS AND I'M NOT GOING TO ASK IT. AND HIS NAME IS FERNANDEZ WITH AN "F." ALL RIGHT. I'M

NOT AWARE OF THE ALLEGATIONS OF THE HARRASSMENT CHARGE. I WASN'T INVOLVED IN THEM, I HAVEN'T SEEN THOSE PICTURES OR VIDEOES OR ANYTHING INVOLVING THAT CASE. I WASN'T THERE.

MR. BRIGGS: BUT YOU CAN ADMIT THEY WERE DISMISSED, YOUR HONOR.

THE COURT: SHE'S TOLD ME AND I ACCEPT IT. I'M ACTUALLY A LITTLE MORE CONCERNED ABOUT WHETHER OR NOT SHE ACCEPTS ANY RESPONSIBILITY IN SOME OF HER TESTIMONY DURING THE TRIAL, INCLUDING AND GOING AS FAR AS TO SAY AND PROVIDING THE PICTURES OF THE SIDE OF THE HOME AND INDICATING THAT ANY OF THE WITNESSES INTERVIEWED BY THE POLICE EITHER WERE NOT WITNESSES AND WERE FLAT LYING OR ACTUALLY BEING COERCED BY THE POLICE AS TO MAKE UP LIES TO GET A WARRANT TAKEN OUT AGAINST HER WHICH I FIND TO KIND OF BE JUST NOT – IT JUST DOESN'T SIT RIGHT BECAUSE THE COPS DIDN'T THEN WRITE A TICKET. AND IF THEY SAT OUT THERE FOR THREE HOURS TO TALK PEOPLE INTO A STORY SO THAT THEY COULD HAVE A RIGHT TO PROSECUTE HER, THEY WOULD HAVE WRITTEN A TICKET. YOU KNOW, THE LADY SAYS CLEARLY WHERE SHE WAS SITTING AND WHAT SHE SAW. HER TESTIMONY IS ACTUALLY LESS THAN THE ALLEGED VICTIM WHICH IS COMMON WHEN YOU HAVE TWO PROPLE FROM DIFFERENT PROSPECTIVES AND THEN DR. FALTAS SAYS EVERYBODY IS LYING, THEY WENT AROUND TO THE BACK OF THE HOUSE. THAT'S ENOUGH.

THE ANSWER IS BASED ON ALL THAT I HAVE HEARD AND BASED ON ALL THAT HAS BEEN ARGUED IN TERMS OF THE SENTENCING I AM INCLINED NOT TO FOLLOW THE RECOMMENDATION OF MR. LUPTON. I AM NOT GOING TO PUT A HUNDRED FOOT RESTRICTION ON YOU, I'M NOT GOING TO PUT ANY

RESTRICTIONS ON YOU. I'VE SAID IT SEVERAL TIMES. I AM NOT CONVINCED THAT IF I DID ANY SUSPENDED SENTENCES THAT I WOULD DO ANYTHING OTHER THAN CREATE MORE ISSUES THAN WE SOLVED. ACCORDINGLY THERE WILL BE NO SUSPENDED SENTENCE. THE SENTENCE OF THE COURT WILL BE TWENTY DAYS CONSECUTIVE TO THE THIRTY DAYS PREVIOUSLY ORDERED. NOW WE'VE GOT ISSUES REGARDING APPEAL. I PREVIOUSLY ADVISED YOU THAT I WILL ALLOW YOU TO APPLY FOR AN APPEAL BOND. I WILL ALLOW BOTH OF YOU TO ARGUE APPEAL BOND AND I WILL RULE ON IT. IF YOU HAVE A NOTICE OF APPEAL, WE'LL GET IT FILED. IF YOU DO N OT, I WILL GIVE YOU UNTIL FIVE O'CLOCK TOMORROW TO GET IT FILED. I THINK, MR. BRIGGS, YOU ALREADY HAD YOURS. MR. LUPTON BEGON ON ONE BUT BECAUSE HIS TRIAL WAS TODAY HE NEEDS TO PUT THE BASIS IN IT AND IF YOU'VE GOT IT TO PRINT OUT FINE, BUT IF YOU NEED TIME WE'LL LET YOU GO UNTIL FIVE. MR. BRIGGS, I'M HAPPY TO HEAR FROM YOU ON APPELLATE BOND.

MR. BRIGGS: YOUR HONOR, I'M GOING TO GIVE YOU ANOTHER COPY. I CAN'T SEEM TO FIND THE ONE THAT WAS SIGNED IN BLUE INK BUT I SIGNED THIS ONE A SECOND TIME.

THE COURT: YES, SIR.

MR. BRIGGS: YOUR HONOR, I'LL BE VERY BRIEF. I DO NOT REMEMBER THE CODE SECTION ABOUT SETTING BONDS. WE DISCUSSED IT AT GREAT LENGTH IN THE, QUOTE, CONTEMPT HEARING BEFORE JUDGE HANNA. I'M SURE MR. FERNANDEZ CAN CITE THAT TO YOU AND YOU PROBABLY KNOW IT BETTER THAN I DO. MY SINGLE POINT, AND I'VE GOT A SECOND ONE BUT MY MAIN POINT, IS THAT I DON'T READ THAT ORDINANCE AS ALLOWING A TRIAL JUDGE TO SET ANY CONDITIONS ON BOND AS JUDGE HANNA DID. THEY WERE

RESTRICTIVE AND ET CETERA, ET CETERA. I READ IT AS THE COURT IS SUPPOSED TO SET A CASH BONF, PERIOD. NOW IF THE COURT READS IT DIFFERENTLY I'M NOT GOING TO ARGUE ABOUT IT ANY FURTHER BUT I THINK IF THERE IS A BOND SET THAT'S SUFFICIENT AND IF THE COURT WANTED TO STAY THE SENTENCE PENDING APPEAL, THIS COURT CAN DO IT OR, OF COURSE, I CAN ASK THE OTHER COURT TO DO IT, TOO. I DON'T ARGUE WHICH WAY THAT OUGHT TO BE, YOUR HONOR. I'LL LEAVE THAT TO THE COURT.

DEFENDANT FALTAS: I'VE ALREADY PAID THE FINE.

MR. BRIGGS: YOUR HONOR, I WANT TO BE CAREFUL WHAT I SAY ABOUT THIS BUT I STILL BELIEVE THAT IN THE TRIAL THAT I DEFENDED HER ON THERE WAS NEVER ANY PROOF OF ANY WATER THERE. THEY DIDN'T HAVE A PICTURE OF ANY WATER. AND I APOLOGIZE BEFORE I SAY IT BUT I THINK IT'S A RINKY DINK ORDINANCE AND I STILL CANNOT BELIEVE THE CITY OF COLUMBIA HAS SPENT AS MUCH MONEY ON PERSECUTING THIS WOMAN AS THEY HAVE. AND SO IN THE INTEREST OF JUSTICE, YOUR HONOR, IN THE INTEREST OF JUSTICE AND WITH THE COMMITMENT OF AN OFFICER OF THE COURT THAT THAT PROPERTY WILL BE CLEANED UP, IT WILL BE CLEANED UP IF IT'S JUST ME AND MY WIFE, AND, YOUR HONOR, SHE HAS GIVE ME PERMISSION TO DO THAT. THERE'S NO QUESTION ABOUT THAT. AND I JUST ASK THAT A REASONABLE BOND BE SET AND LET HER GO ON AND DO HER APPEAL THING AND I MAY ASK TO BE RELIEVED IN THAT BUT THAT'S ANOTHER ISSUE. THAT DOESN'T HAVE ANYTHING TO DO WITH THIS COURT, BUT I JUST THINK WITH EVERYTHING ELSE THAT'S BEEN – JUDGMENTS THAT HAVE BEEN RENDRED THAT A VERY REASONABLE BOND IS SUFFICIENT BECAUSE I JUST THINK IT'S APPROPRIATE, YOUR HONOR.

THE COURT: MR. FERNANDEZ, ANY POSITION?

MR. FERNANDEZ: YES, YOUR HONOR. HAVING – MR. BRIGGS IS CORRECT. WE'VE BEEN THROUGH THIS BEFORE. THE LAST APPEAL BOND THAT WAS SET AND ONLY CONDITIONS THAT WERE APPLIED ON IT, THAT WAS JUDGE HANNA. THAT WAS APPEALED. I BELIEVE JUDGE LEE HEARD THE MATTER, ISSUED AN ORDER ON IT UPHOLDING WHAT WAS DONE. I CAN PROVIDE YOUR HONOR WITH THAT ORDER IF YOU'D LIKE TO SEE THE ANALYSIS.

THE COURT: I DO NOT, THANK YOU.

MR. FERNANDEZ: I'M NOT ASKING FOR ANY ADDITIONAL REQUIREMENTS AS FAR AS THIS BOND BUT, OF COURSE, DEFER TO THE COURT'S BEST JUDGMENT. IT'S MY UNDERSTANDING THOUGH THAT THE APPEAL BOND FOR CHARGE IS GENERALLY THE HIGHEST, THE MAXIMUM BOND AMOUNT CASH THAT HAS TO BE PROVIDED WITH THE COURT. THAT'S MY UNDERSTANDING OF THE APPEAL BOND PROCESS, YOUR HONOR.

THE COURT: AND WHAT IS YOUR UNDERSTANDING OF THE MAXIMUM BOND AMOUNT ON THIS CHARGE?

MR. FERNANDEZ: THIS CHARGE I BELIEVE -- IS IT FOUR HUNDRED AND SEVENTY DOLLARS?

THE COURT: THAT'S WHAT'S WRITTEN ON THE ORDINANCE.

MR. FERNANDEZ: I BELIEVE THAT'S IT., AND THEN – I MEAN COSTS ARE ASSESSED ALSO.

THE COURT: TYPICALLY THE WAY THEY WRITE IT ON THE SUMMONS IS INCLUSIVE SO IT'S PROBABLY – FOUR SEVENTY IS PROBABLY EXCLUSIVE OF COSTS BUT I'LL LET THE OFFICER TELL THE OFFICER (INAUDIBLE) IF HE HAS ANYTHING.

MR. BRIGGS: YOUR HONOR, JUST FOR THE RECORD THAT AMOUNT WAS POSTED, THAT IS, THE NORMAL FINE WAS POSTED ON THIS OFFENSE.

THE COURT: ALL RIGHT. IS THAT MONEY WITH THE CITY NOW?

DEFENDANT FALTAS: YES, SIR, IT STILL IS.

MR. LUPTON: THAT'S CORRECT, YOUR HONOR. FOUR SEVENTY.

THE COURT: ALL RIGHT. BOND WILL BE SET AT FOUR HUNDRED AND SEVENTY DOLLARS. I'M NOT SETTING ANY CONDITIONS AT THIS TIME.

DEFENDANT FALTAS: THANK YOU, YOUR HONOR. NOW THE BOND THAT HAS ALREADY BEEN PAID IS THE BOND, RIGHT?

MR. FERNANDEZ: THE BOND THAT'S BEEN PAID WAS ACTUALLY THE BOND FOR THE CHARGE ITSELF BUT I DON'T THINK THE COURT WOULD HAVE ANY ISSUE TRANSFERRING THE BOND SET FOR THE CHARGE AND KIND OF CONVERTING IT TO AN APPEAL BOND. I BELIEVE THE COURT – AND THIS IS A JUDGE TURNER QUESTION – I BELIEVE THE COURT PROBABLY HAS A SEPARATE ACCOUNT FOR THAT KIND OF THING. WE'VE BEEN THROUGH – I'VE BEEN THROUGH APPEAL BONDS WITH THIS DEFENDANT BEFORE AND TWO OTHERS DEFENDANTS SO IT'S NOT – I KNOW THAT THERE'S SOME EXPERIENCE WITH APPEAL BONDS HERE. I DON'T THINK THAT'S VERY DIFFICULT FOR THE COURT TO DO.

MR. BRIGGS: YOUR HONOR, I WOULD ADD THAT TECHNICALLY SINCE YOU DID NOT FINE HER FOR THIS OFFENSE.

THE COURT: IN TERMS OF MONEY. I GAVE HER JAIL TIME.

MR. BRIGGS: SO THAT MONEY IS FREE.

THE COURT: THE ANSWER IS FOUR HUNDRED SEVENTY DOLLARS HAS TO BE PAID AS AN APPEAL BOND. IF THAT CAN BE ADMINISTRATIVELY

TRANSFERRED THAT'S FINE. IF YOU HAVE TO GET A REFUND AND THEN PAY IT, THAT'S WHAT YOU'VE GOT TO DO. I'M NOT IN CHARGE OF THE MONEY. AND THE APPEAL BOND HAS TO BE PAID BY FIVE O'CLOCK TOMORROW. IF THE MONEY IS NOT FREED BY FIVE O'CLOCK TOMORROW, FIND FOUR HUNDRED AND SEVENTY DOLLARS FROM SOMEWHERE ELSE UNTIL YOU GET IT FREE. BUT I DON'T WANT TO GET CAUGHT IN SOME I DON'T KNOW WHAT ACCOUNT IT'S IN SO YOU'VE GOT TO HAVE FOUR SEVENTY FOR THE APPEAL BOND BY FIVE O'CLOCK TOMORROW. YES, SIR.

DEFENDANT FALTAS: MAY I SAY IF IT'S NOT – IF THE BOND IS NOT FREED BY TOMORROW AND THE APPEAL BOND IS PAID SINCE I'M ONLY GIVEN A JAIL SENTENCE, CAN THE TRIAL BOND BE REFUNDED?

THE COURT: THERE IS AN APPROPRIATE REVENUE AVENUE FOR GETTING A REFUND OF A BOND IF IT'S NOT OWED AT THE END OF TRIAL. YOU'VE GOT TO FOLLOW THAT PROCESS.

DEFENDANT FALTAS: BUT YOUR HONOR IS RULING THAT THE BOND –

THE COURT: I AM RULING THAT YOU HAVE A THIRTY-DAY SENTENCE.

DEFENDANT FALTAS: AND NO FINE.

THE COURT: I AM RULING THAT YOU HAVE A THIRTY-DAY SENTENCE.

DEFENDANT FALTAS: OKAY.

THE COURT: YES, SIR.

MR. LUPTON: MY UNDERSTANDING IS THAT THERE WAS NO – THAT THIS WAS A P.R. BOND FOR THE SIMPLE ASSAULT AND I WOULD ASK THAT

THE COURT EITHER GRANT THE P.R. BOND ON THIS OR IN THE ALTERNATIVE IF THE COURT IS GOING TO IMPOSE A CASH BOND THAT THE COURT BECAUSE THERE IS NOT OTHER MONEY TO BE PAID AND BECAUSE OF FINANCIAL ISSUES THAT THE COURT WOULD CONSIDER GIVE THE LATE HOUR TONIGHT, THE COURT CONSIDER GIVING HER A LITTLE BIT OF EXTRA TIME BEFORE FIVE O'CLOCK TOMORROW TO PAY ANY ADDITIONAL APPEAL BOND ON THE SIMPLE ASSAULT. OR SIMPLY RUN IT CONCURRENT.

THE COURT: DOES SHE HAVE ANY ASSETS?

MR. LUPTON: YOUR HONOR, THE ONLY ASSET THAT SHE HAS I'M AWARE OF IN TERMS OF REAL PROPERTY IS THE PROPERTY THAT SHE OWNS WITH HER MOTION ON BRYON STREET.

THE COURT: DO WE KNOW THE VALUE OF THAT PROPERTY?

MR. LUPTON: YOUR HONOR, SHE MAY KNOW THAT.

THE COURT: DO YOU KNOW THE VALUE OF THAT PROPERTY?

DEFENDANT FALTAS: YOUR HONOR, --

MR. BRIGGS: ANSWER THE QUESTION.

DEFENDANT FALTAS: YOUR HONOR, THE PURCHAS PRICE WAS FOUR THOUSAND DOLLARS BUT IT'S CO-OWNED. IT'S CO-OWNED.

THE COURT: WHAT'S THE VALUE NOW? DO YOU KNOW?

DEFENDANT FALTAS: I GUESS IT'S THE SAME TAX ESTIMATE BUT I DON'T THINK ANYONE WOULD BUY IT.

THE COURT: DO YOU HAVE ANY OTHER ASSETS?

DEFENDANT FALTAS: NO. (INAUDIBLE).

THE COURT: DON'T LIMIT THEM. HAVE YOU GOT ANY KIND OF ASSETS THAT ARE WORTH SOMETHING?

DEFENDANT FALTAS: NO, NO. I MEAN NOTHING THAT'S LIQUID.

THE COURT: YES, SIR.

MR. BRIGGS: YOUR HONOR, OF COURSE, I CANNOT PAY HER BOND BUT I'VE BEEN IN TOUCH WITH PEOPLE. I KNOW THAT A LOAN COULD BE MADE TO HER TO PAY FOUR HUNDRED SEVENTY DOLLARS, YOUR HONOR, BY TOMORROW.

THE COURT: YES, SIR.

MR. FERNANDEZ: SIMILAR TO THE OTHER BOND, AN APPEAL BOND SHOULD GENERALLY BE THE MAXIMUM BOND AMOUNT. SIMPLE ASSAULT CARRIES A HIGHER FINE THAN FOUR HUNDRED AND SEVENTY DOLLARS.

THE COURT: OKAY. ANYTHING FURTHER FROM ANYBODY?

MR. LUPTON: YOUR HONOR, WHATEVER NORMAL IS, THE COURT HAS DISCRETION. I WOULD ASK THE COURT TO EXERCISE THAT DISCRETION IN FAVOR OF GRANTING A BOND THAT'S LOWER THAN THE MAXIMUM.

MR. LUPTON: COULD WE ADD A HUNDRED DOLLARS TO IT, YOUR HONOR, JUST TRYING TO HELP?

THE COURT: NO, SIR. WE ARE GOING TO DO ONE THOUSAND NINETY-TWO FIFTY. NO CONDITIONS. ALL RIGHT?

DEFENDANT FALTAS: AM I ALLOWED TO TRAVEL, YOUR HONOR, OUT OF STATE?

THE COURT: I'VE SET NO CONDITIONS ON YOUR BOND.

DEFENDANT FALTAS: THANK YOU.

THE COURT: THE BOND HAS TO BE PAID BY FIVE O'CLOCK TOMORROW, WHETHER THAT BE THROUGH TRANSFER ON THE FIRST ONE OR

THROUGH PAYMENT. SECOND BOND HAS TO BE PAID AS WELL. THEY ARE TWO INDIVIDUAL BONDS. IF YOU FAIL TO PAY THEM BY FIVE O'CLOCK TOMORROW WE ARE GOING TO ISSUE A BENCH WARRANT FOR YOU AND YOU'LL HAVE TO SEEK AN APPEAL BOND FROM THE NEXT COURT UP.

DEFENDANT FALTAS: MY QUESTION IF IT PLEASES THE COURT, DO I NEED TO COME OR DOES COUNSEL?

THE COURT: I JUST WANT IT PAID.

DEFENDANT FALTAS: OKAY.

MR. FERNANDEZ: THANK YOU, YOUR HONOR.

THE COURT: THANK Y'ALL VERY MUCH.

MR. LUPTON: THANK YOU, YOUR HONOR.

(ADJOURNED)

City Of Columbia Municipal Court

CASE HISTORY FOR CASE 201310

State of South Carolina vs Marie Assaad-Faltas

FILED DATE. 7/2/2012 | CASE TYPE: CR | STATUS: Disposed

JUDGE: City Of Columbia Municipal Court

ARRESTING AGENCY: Columbia Planning & Development

CASE PARTIES:

Defendant	Assaad-Faltas, Marie P. O Box 9115, Columbia, SC 29290
Officer	Sims, Myron C 1136 Washington Street, Columbia, SC 29217
Witness	Mason, Larry 1403 Haigs Creek Drive, Elgin, SC 29045
Witness	Steele, Dinah 1403 Haigs Creek Drive, Elgin, SC 29045
Defendant Attorney	Lupton, Theodore Nichols 140 Gibson Rd., Lexington, SC 29072
Officer	Sims, Myron 1136 Washington Street, Columbia, SC 29217
Bond Entity	Assaad-Faltas, Marie P.O Box 9115, Columbia, SC 29209

CASE HISTORY FOR CASE 201310

Assaad-Faltas, Marie
P. O. Box 9115

Columbia, SC 29290

Age: 60
DL#:

DOB: [redacted]
SSN: [redacted]

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
401061	CTY International Property Maintenance: Unlawful Acts 1st Offense	10/20/2011	Guilty Jury Trial	4/26/2013
SENTENCING				
Jail Suspended				

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
CTY International Property Maintenance: Unlawful Acts 1st Offense				
Refund	$470.00	$0.00	$470.00	1
Charge: CTY International Property Maintenance: Unlawful Acts 1st Offense				
Fine to General Fund	200.00	0.00	200.00	999
Victim Services Asm 38.0013% / 5.783	24.00	0.00	24.00	999
Victim Conviction Surcharge $100 / $2!	25.00	0.00	25.00	999

Print Date: 06/11/2013
Print Time: 1:35:33PM
Requested By: CTYAHRENSN

CASE HISTORY FOR CASE 201310

Law Enforcement Funding Surcharge $	$25.00	$0 00	$25.00	999
SC Criminal Justice Academy Training	5 00	0 00	5 00	999
State Assessment	191 00	0.00	191.00	999
Total:	$940 00	$0 00	$940 00	

DATE	TIME	EVENT DESCRIPTION
1/2/2012	8:00 AM	Court event: Criminal/Traffic Court
7/10/2012	8:00 AM	Court event: Criminal/Traffic Jury Trial Day Certain
7/10/2012	12:00 AM	CTYSTRIPLI recorded the following Case Note. ********** CONTINUED **********
7/12/2012	11:52 AM	Filing recorded. Continued
8/7/2012	8:00 AM	Court event: Criminal/Traffic Jury Trial Roster/Jury Term
8/13/2012	1.03 PM	Filing recorded: Continued
8/13/2012	12:00 AM	CTYPOPES recorded the following Case Note: ********* CONTINUED *********
8/13/2012	8:00 AM	Court event. Criminal/Traffic Jury Trial Day Certain
11/6/2012	8:00 AM	Court event: Criminal/Traffic Jury Trial Roster/Jury Term
12/4/2012	4:54 PM	Filing recorded: Continued
12/4/2012	12:00 AM	CTYTURNERD recorded the following Case Note: ********* CONTINUED JURY TRIAL ********* ********* CONTINUED JURY TRIAL *********
12/4/2012	8:00 AM	Court event: Criminal/Traffic Jury Trial Roster/Jury Term
12/4/2012	10:55 AM	Filing recorded: Continued
3/12/2013	8:00 AM	Court event: Criminal/Traffic Jury Trial Roster/Jury Term
3/12/2013	10:12 AM	Filing recorded: Continued
3/12/2013	12:00 AM	CTYPLASTER recorded the following Case Note: ********* CONTINUED *********
4/2/2013	8:00 AM	Court event: Criminal/Traffic Jury Trial Roster/Jury Term
4/11/2013	8:00 AM	Court event: Criminal/Traffic Jury Trial Day Certain
4/11/2013	12:00 AM	CTYTHOMAS recorded the following Case Note. TRACY THOMAS(COURT CLERK) RECEIVED MEDICAL RECORDS OF DEFENDANT FROM ATTORNEY MR. THEODORE LUPTON , AND TURNED THEM OVER TO JURY TRIAL SCHEDULING MS. FLUITT. DEFENDANT WAS FOUND GUILTY $ 470.00 OR 30 DAYS CONSECUTIVE TO L066971- (SIMPLE ASSAULT) TRACY THOMAS(COURT CLERK) RECEIVED MEDICAL RECORDS OF DEFENDANT FROM ATTORNEY MR. THEODORE LUPTON , AND TURNED THEM OVER TO JURY TRIAL SCHEDULING MS. FLUITT DEFENDANT WAS FOUND GUILTY $ 470.0 OR 30 DAYS CONSECUTIVE TO L066971- SIMPLE ASSAULT PAY BY 5:00PM 04-26-2013
4/11/2013	8:00 AM	Court event: Criminal/Traffic Jury Trial Day Certain
4/26/2013	12:00 AM	Bond 1 was set in the amount of 00 by Solomon, Carl L
4/26/2013	3:08 PM	Received payment of $470.00 from Marie Assaad-Faltas for Marie Assaad-Faltas. Printed receipt #19123
4/26/2013	12:00 AM	CTYTURNERD recorded the following Case Note: Appeal Bond
4/26/2013	11.47 AM	Filing recorded: Bond Comment To Notes Screen
4/29/2013	1.14 PM	Received payment of $470.00 from Marie Assaad-Faltas for Marie Assaad-Faltas. Printed receipt #19203.

CITY OF COLUMBIA

Planning and Development Services
Code Enforcement
P.O. Box 147 | Columbia, South Carolina 29217
Phone: 803-545-3430

WRITTEN NOTICE OF VIOLATION

DATE & TIME
VIOLATION OBSERVED: 7 October 2011

DATE & TIME
NOTICE SERVED: _____

PERSON SERVED:

Marie Therese H Assaad-Faltas
PO Box 9115
Columbia SC 29290

REGARDING THE FOLLOWING PROPERTY:

Street Address 324 Byron Dr TMS# R16406-06-27

Dear Sir or Madam,

Your attention is called to unauthorized items/debris stored outside at the above-reference property, and this condition constitutes a violation of Section Number(s) 8-41, 8-32, 307.1 of the:

- x☐ Code of Ordinances, City of Columbia, South Carolina;
- x International Property Maintenance Code (as adopted by Section 5-151 of the Code of Ordinances, City of Columbia, South Carolina and hereinafter referred to as "the IPMC"); or
- ☐ Zoning Ordinance of the City of Columbia, South Carolina.

You are hereby ordered to correct this violation by Removing unauthorized items/debris within 10 days.

Please note that a City representative will revisit the premises after 17 October 2011 (day/month/year), to conduct a follow-up inspection.

Any persons directly affected by a notice issued under the IPMC shall have the right to appeal to the board of appeals, provided that a written application is filed within 20 days after such notice was served (see Section 111 of the IPMC for a complete description of the appeal provisions). Also, Section 106.3 of the IPMC states that any action taken by the authority having jurisdiction to restrain, correct, or abate a violation shall be charged against the real estate upon which the violation occurs and shall be a lien upon such real estate. Any person aggrieved by a notice issued under the Zoning Ordinance may appeal to the board of zoning appeals, provided that a written application is filed within 30 days after such notice was served (see Section 17-111 of the Zoning Ordinance for a complete description of the appeal provisions).

Lastly, thank you in advance for your prompt attention to this matter. Please contact me at the telephone number below if you have any questions or comments.

Signature of Issuing Officer _____ **PRINT NAME** Myron C. Sims
Title Housing Inspector **Telephone** 545-3434, 223-4049

CITY OF COLUMBIA
UNIFORM ORDINANCE SUMMONS

No. 201310

CITY OF COLUMBIA VERSUS

LAST NAME	FIRST NAME	MIDDLE NAME

ADDRESS

DOB	RACE	SEX	HT.	WT.	HAIR	EYES	DL #

YOU ARE SUMMONED TO APPEAR BEFORE THE MUNICIPAL JUDGE FOR THE CITY OF COLUMBIA AT 811 WASHINGTON STREET, COLUMBIA, SOUTH CAROLINA ON Date of Trial _____ AT Time of Trial _____ AM PM FOR A TRIAL CONCERNING VIOLATION OF CITY OF COLUMBIA ORDINANCE:

Ordinance Section No.	Date Issued	Bond Amount $

Description of Ordinance	Charge Code

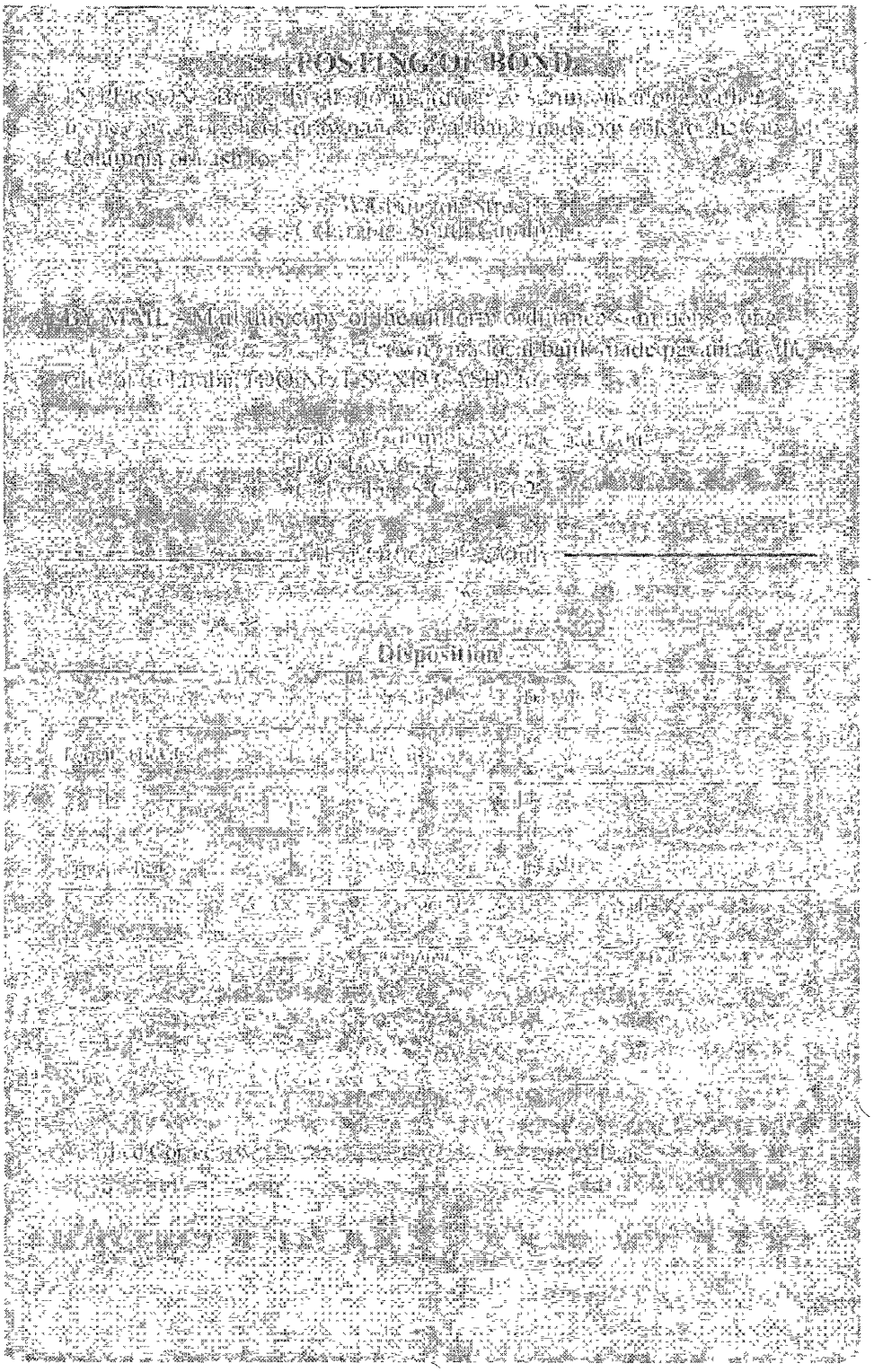
Date of Violation	Time of Violation A.M. P.M.	Place of Violation

Name of Issuing Officer	Employee No. /Dept	Title Code Enforcement Officer

Please see reverse side for instructions on how to post the bond and important regarding your rights. The issuing officer cannot accept the bond. Bond must be received prior to the date and time you are required to appear. **NOTICE**

FAILURE TO APPEAR BEFORE THE COURT WITHOUT HAVING POSTED BOND OR WITHOUT HAVING BEEN GRANTED A CONTINUANCE BY THE COURT IS A MISDEMEANOR PUNISHABLE BY A FINE UP TO $200 OR IMPRISONMENT FOR UP TO 30 DAYS.

WHITE COPY: COURT YELLOW COPY: VIOLATOR PINK COPY: ISSUING OFFICER



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CITY OF COLUMBIA
SOUTH CAROLINA
MUNICIPAL COURT / P.O. BOX 644 / COLUMBIA, SC 29202 / (803) 545-3150 FAX (803) 733-8433

August 4, 2014

The Honorable Alison Lee
P. O. Box 192
Columbia, SC 29202

DELIVERY BY HAND

Re: City of Columbia vs. Marie Therese Assa'ad Faltas
2013CP4003525

Dear Judge Lee:

Enclosed please find the additional exhibits (photographs) that you requested in connection with the above referenced case Please contact me if you need additional materials or additional information.

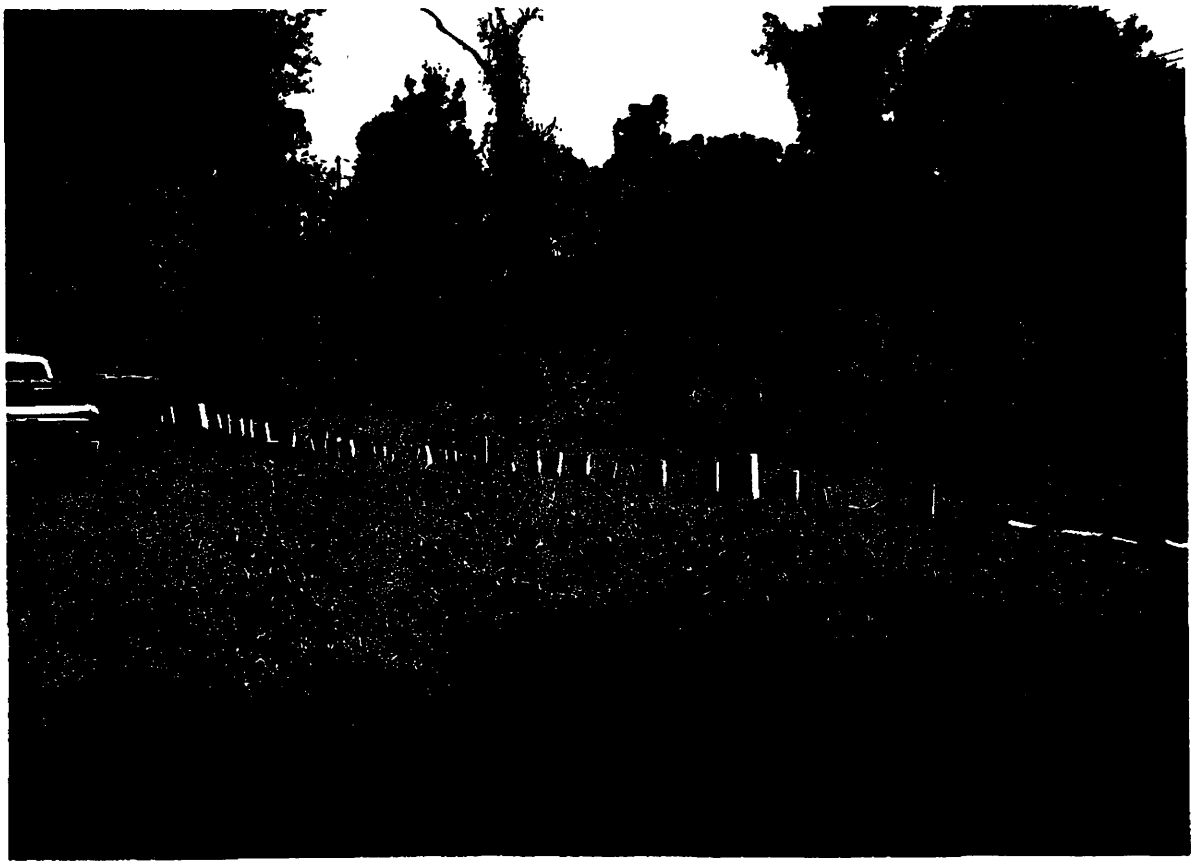
Thank you for your attention to this matter.

Sincerely,

Dana D. Turner
Chief Administrative Judge

Ms. Marie Assa'ad Faltas, M.P.H.
P. O. Box 9115
Columbia, South Carolina 29209

Ms. Teresa Knox
City Attorney
City of Columbia Legal Department
P. O. Box 667
Columbia, SC 29202



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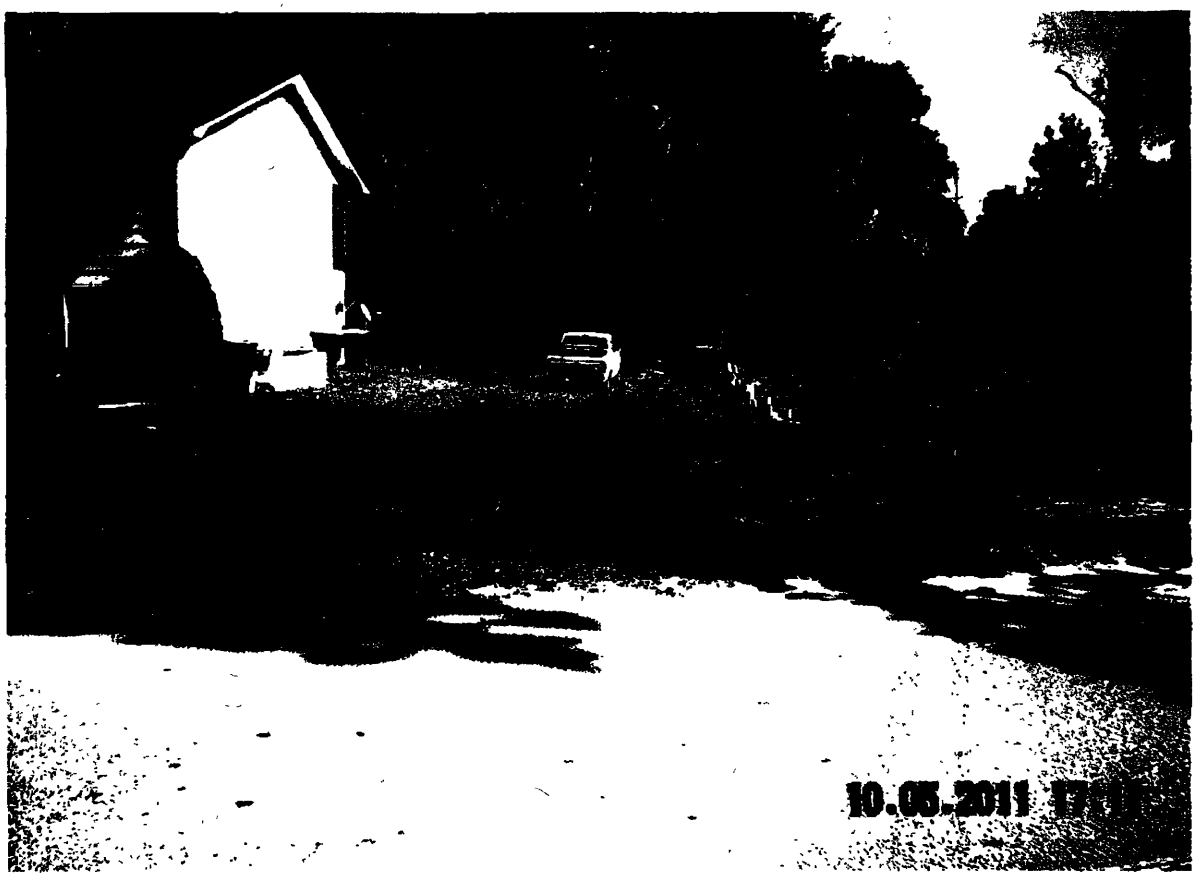
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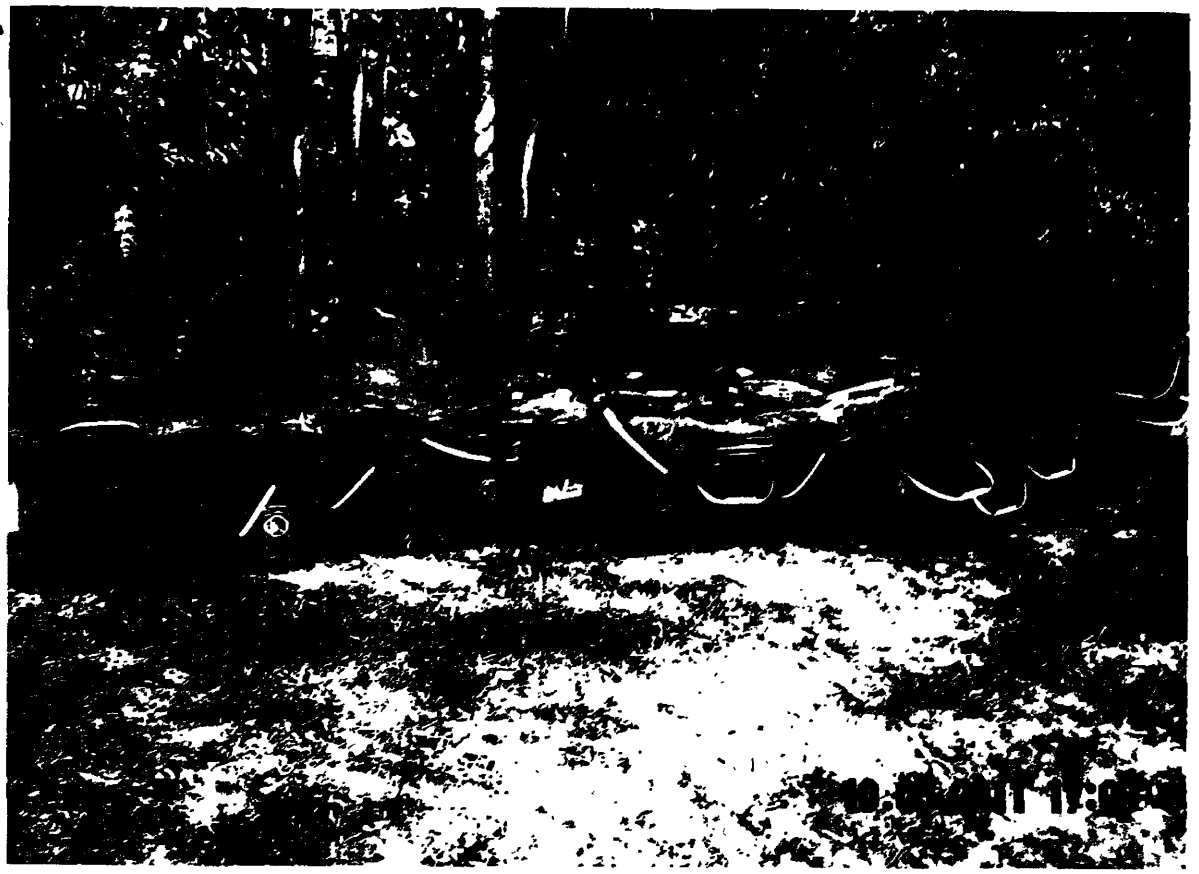

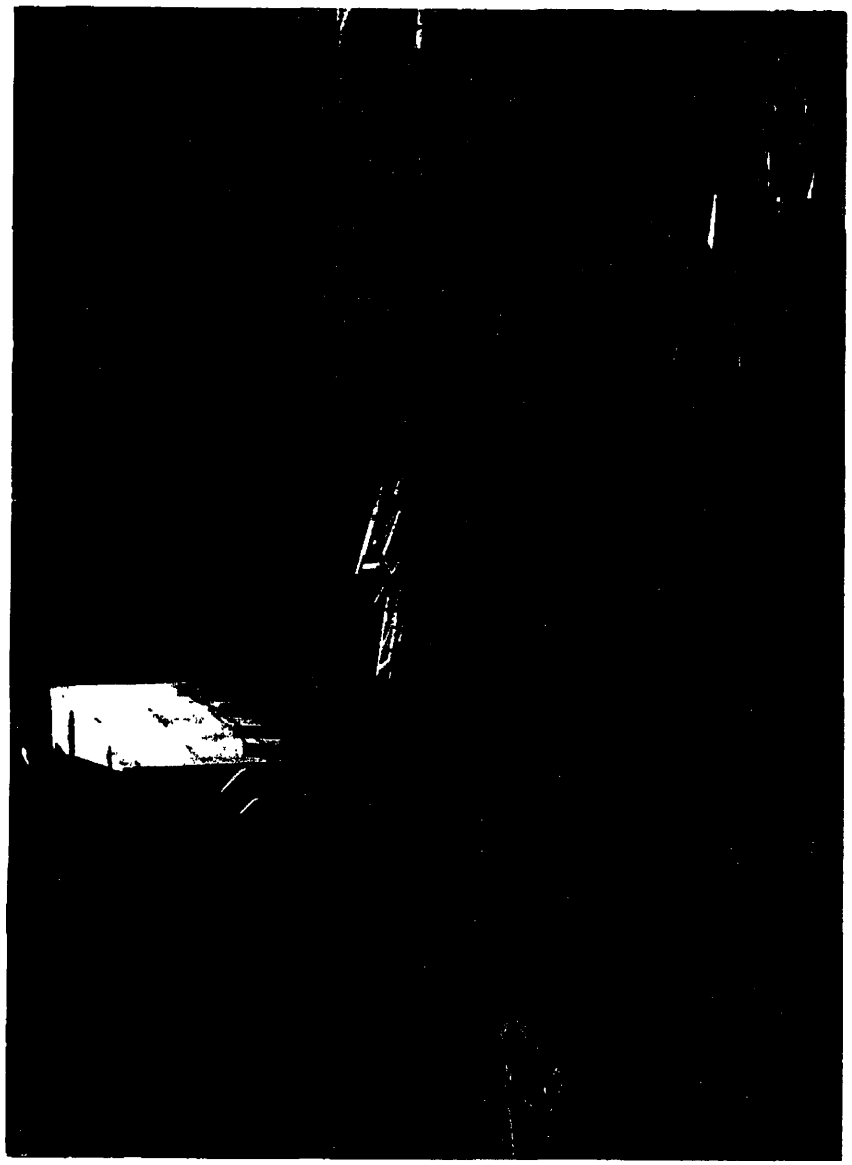

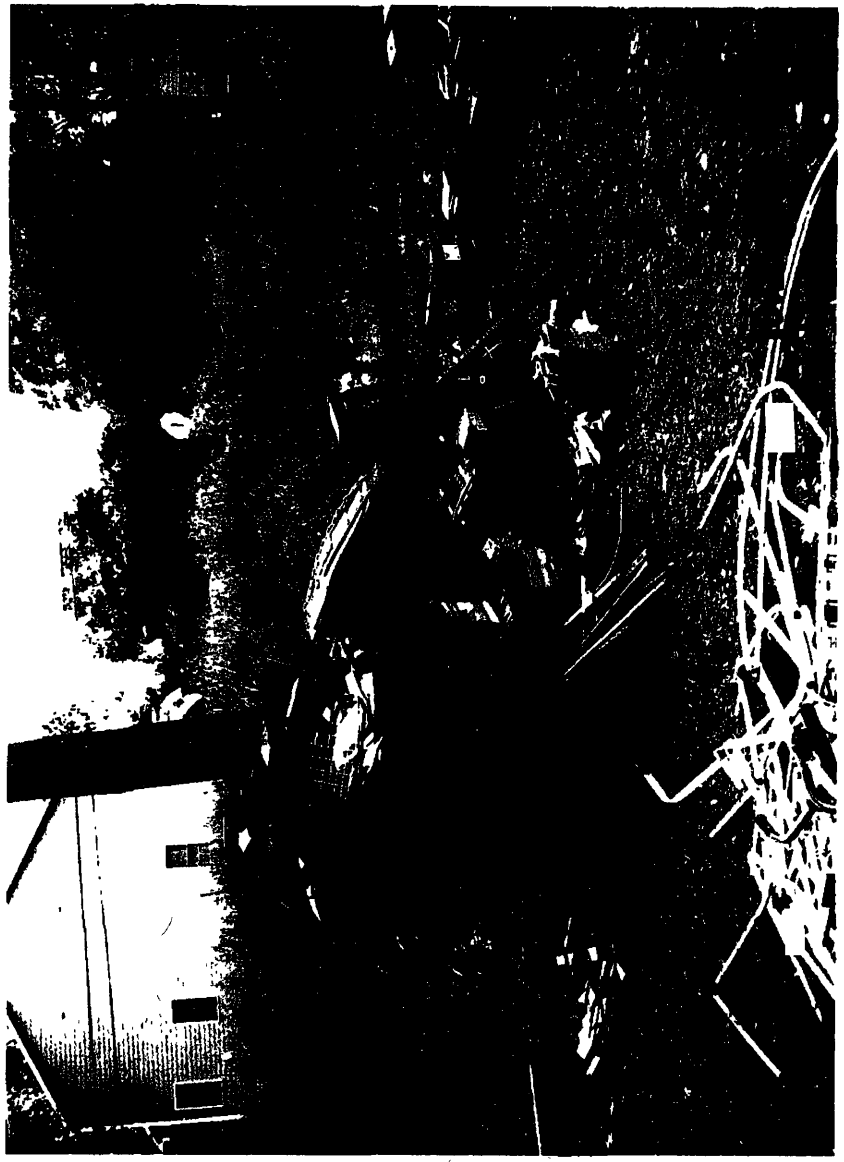

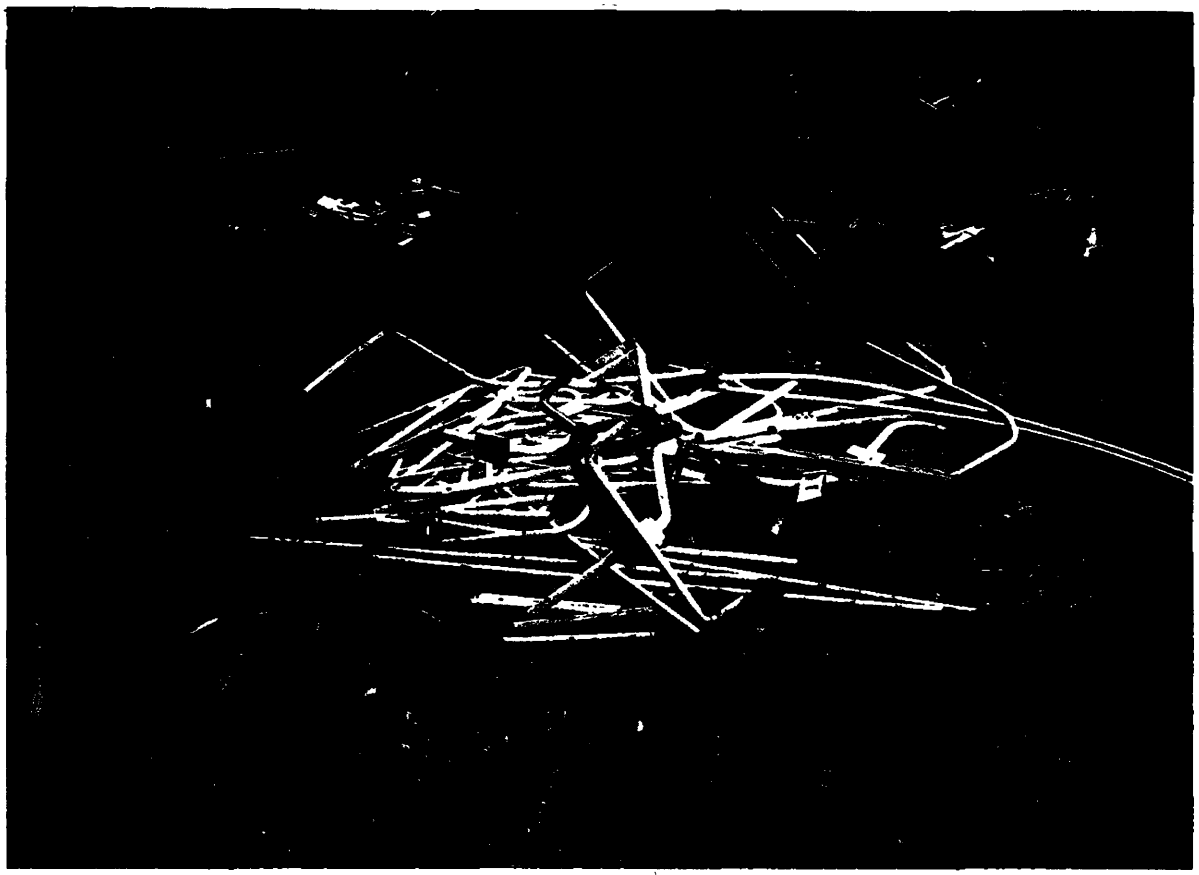

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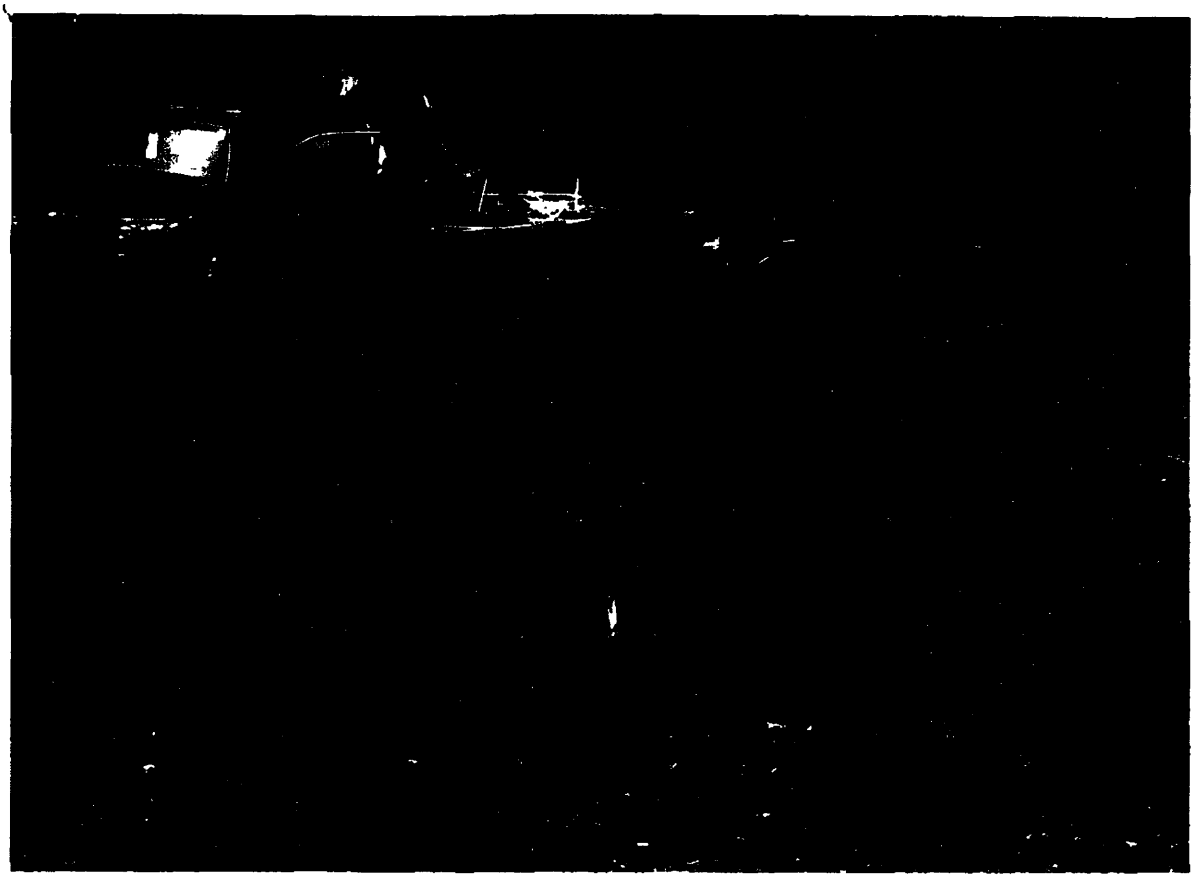

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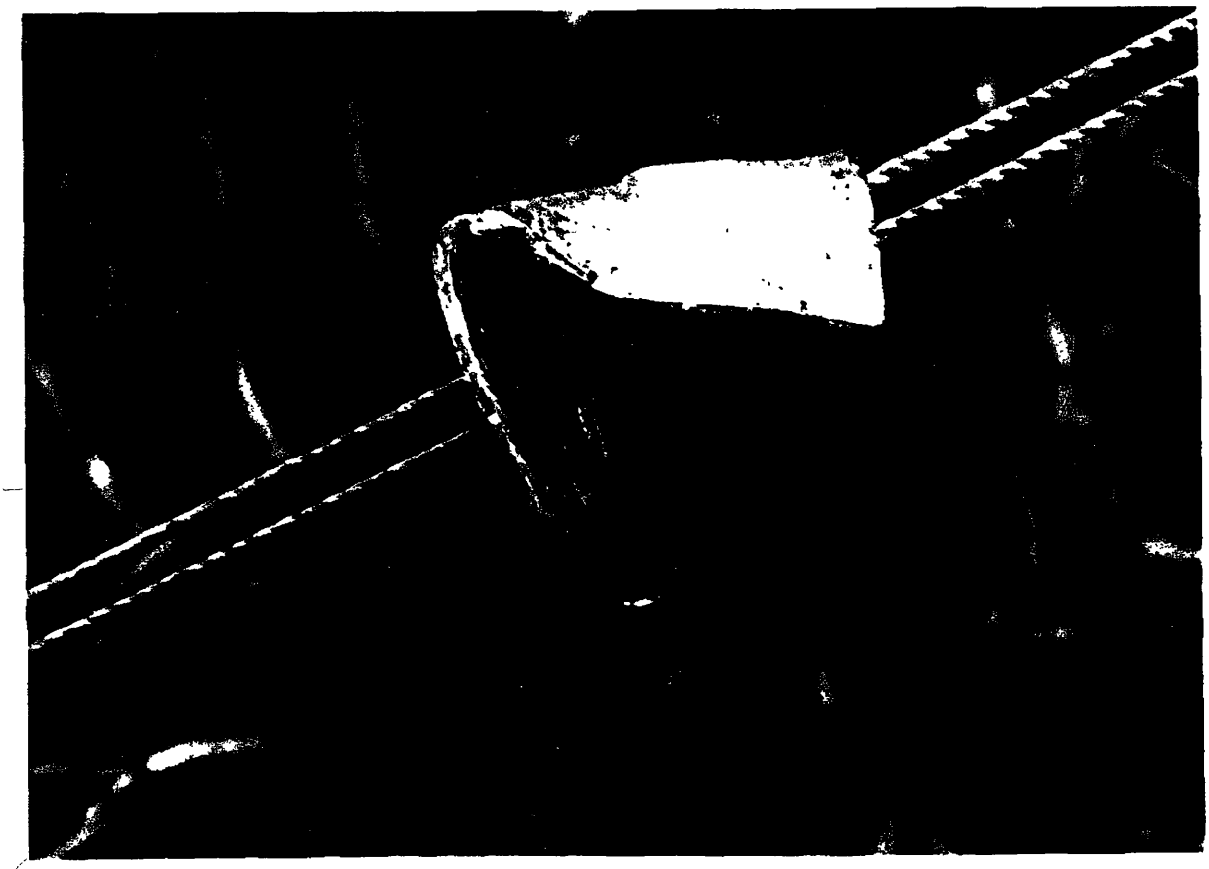

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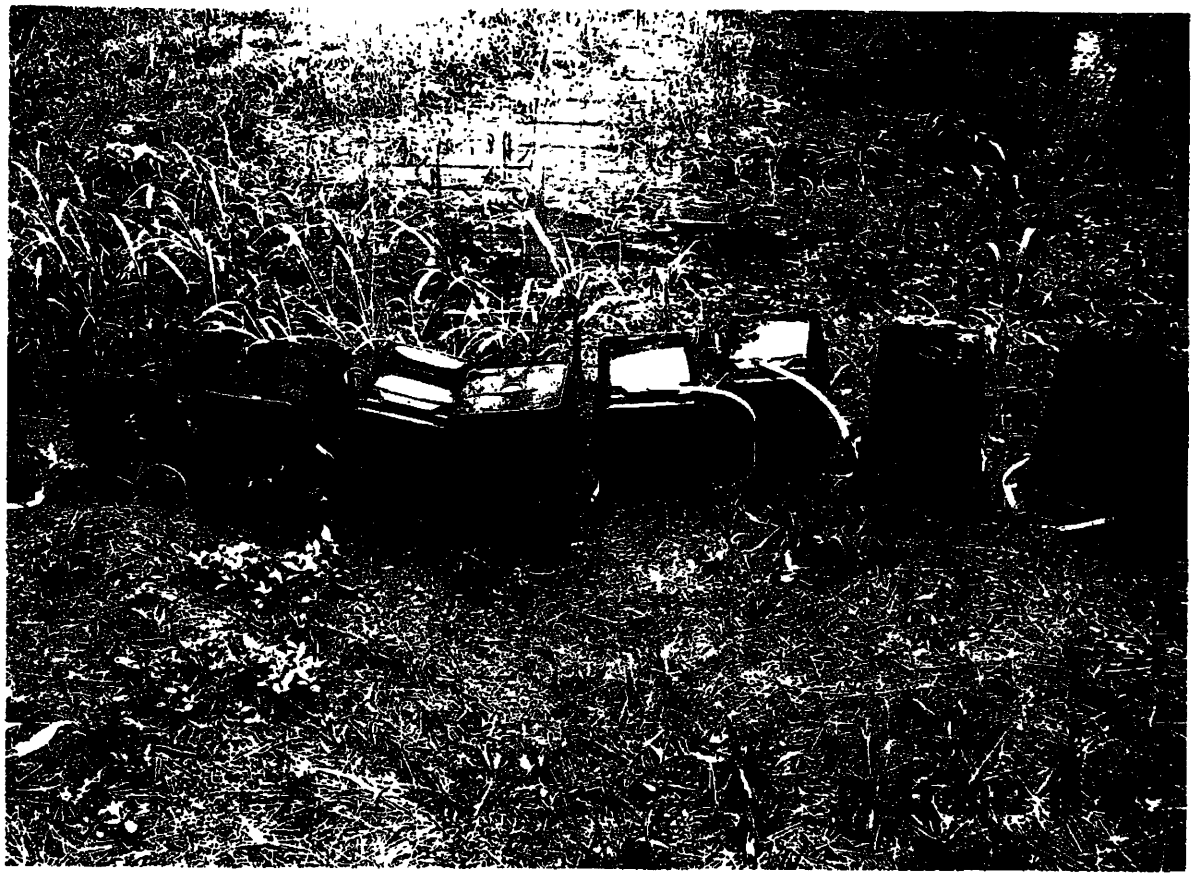

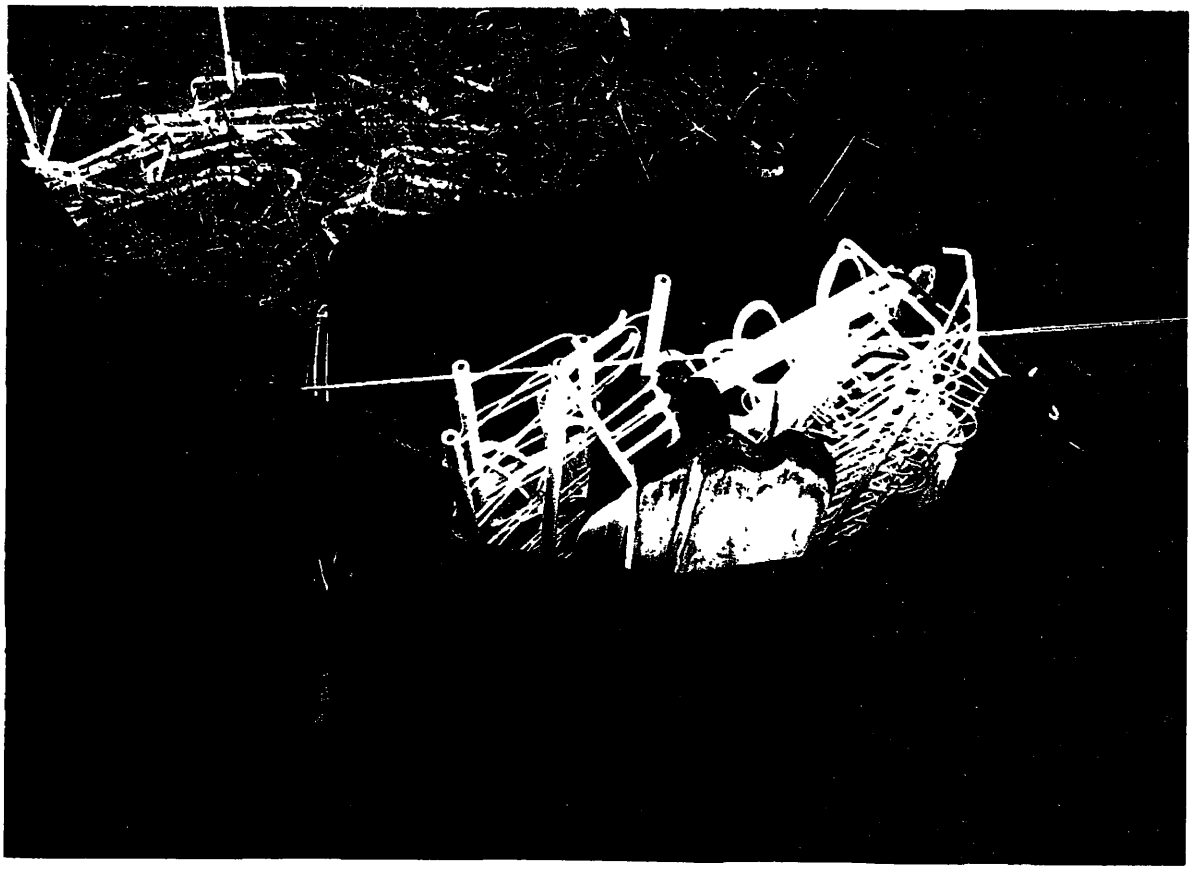

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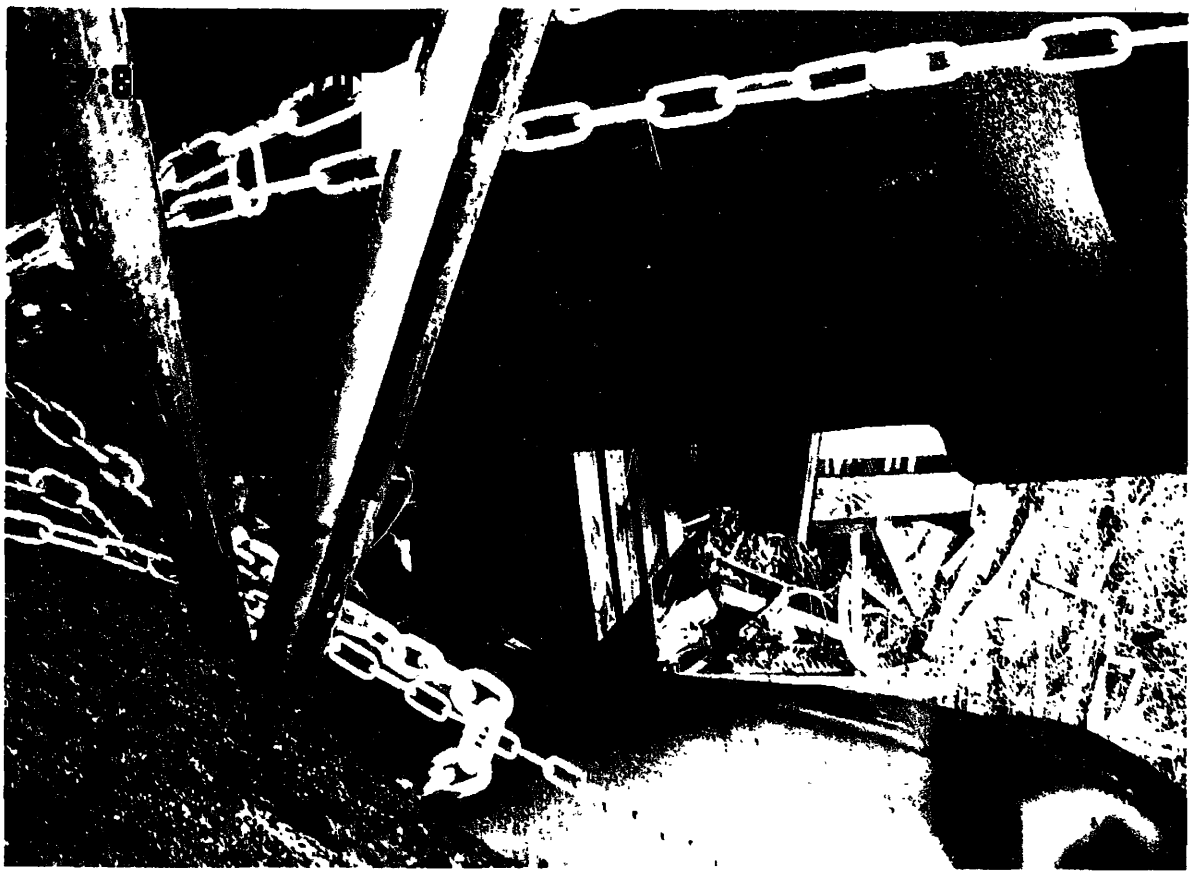

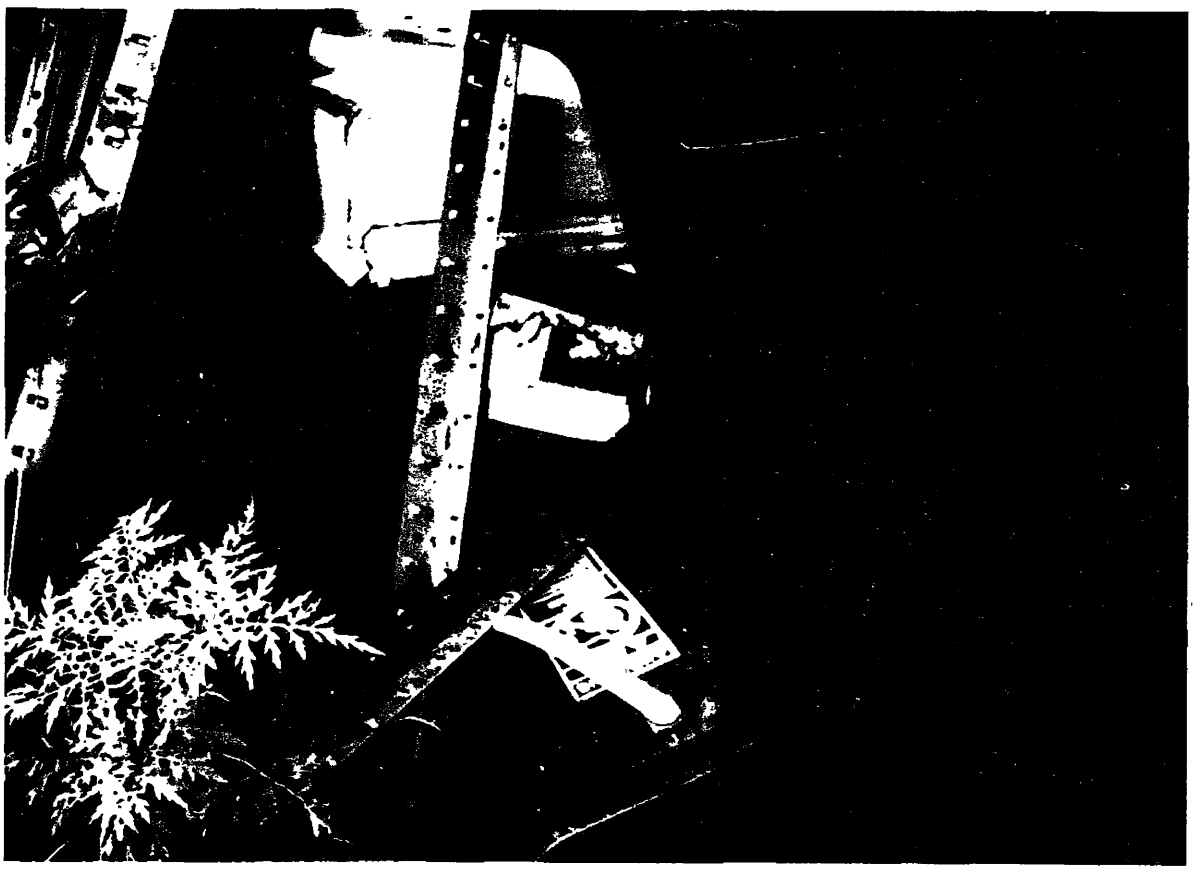

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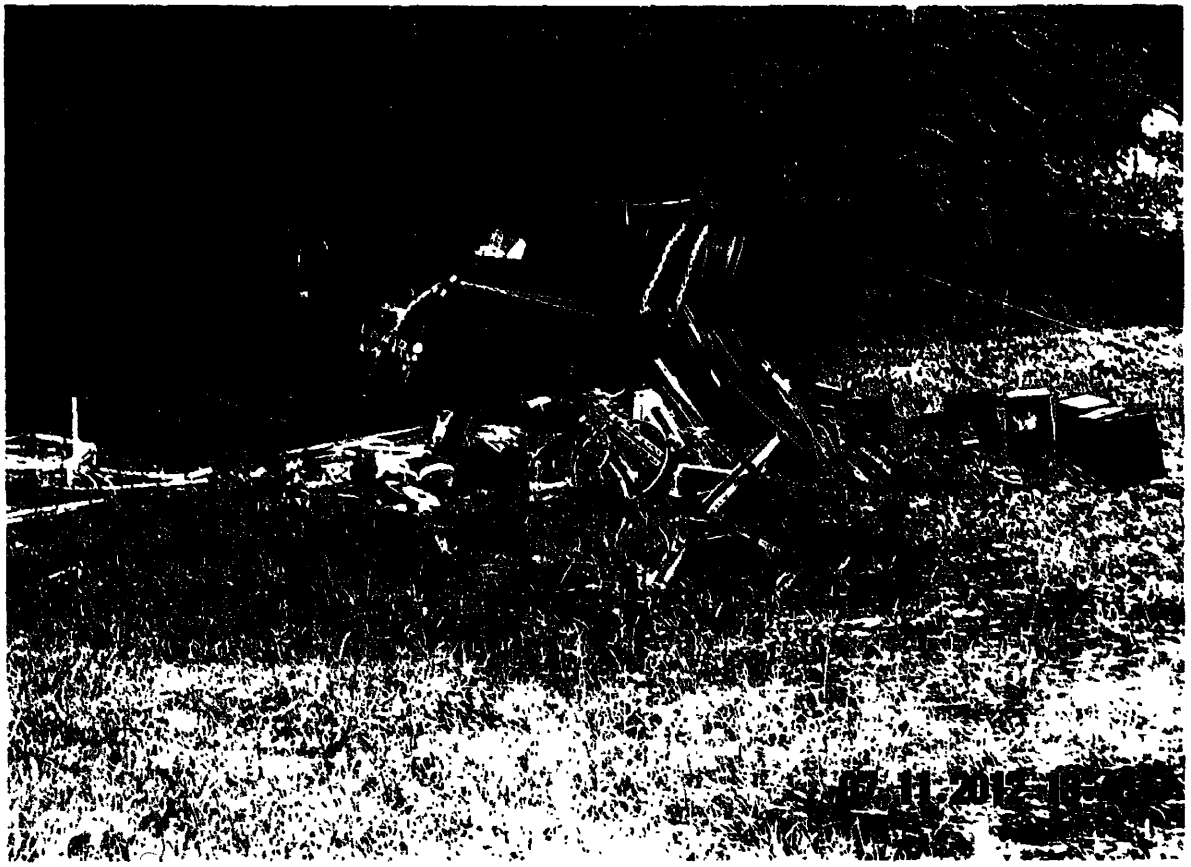

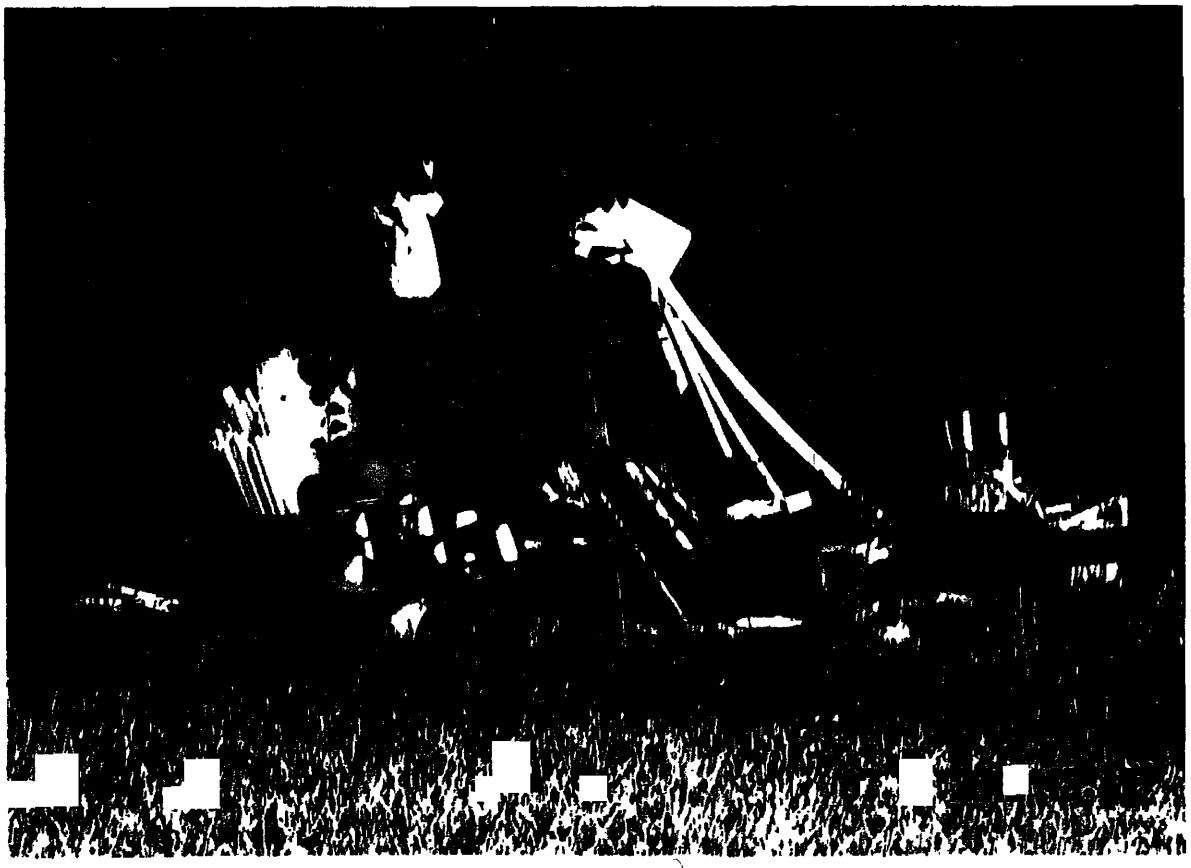

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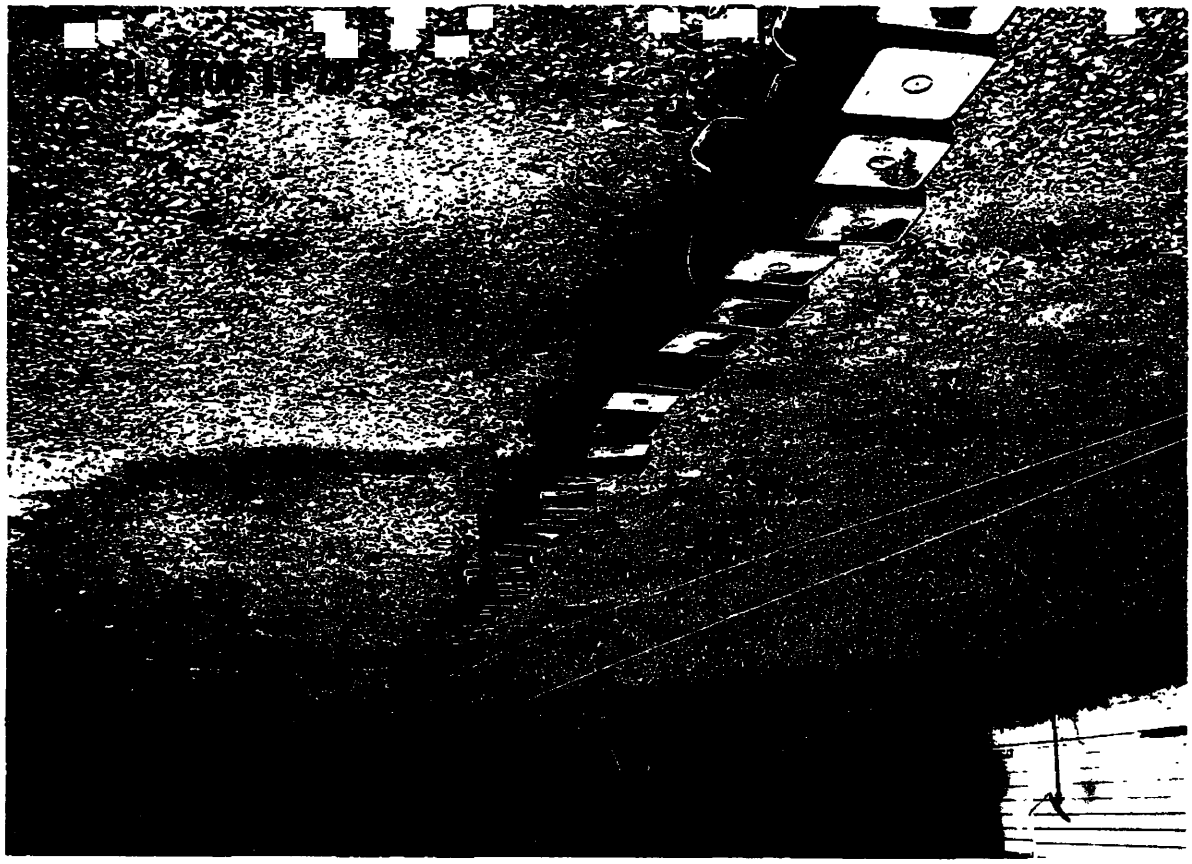

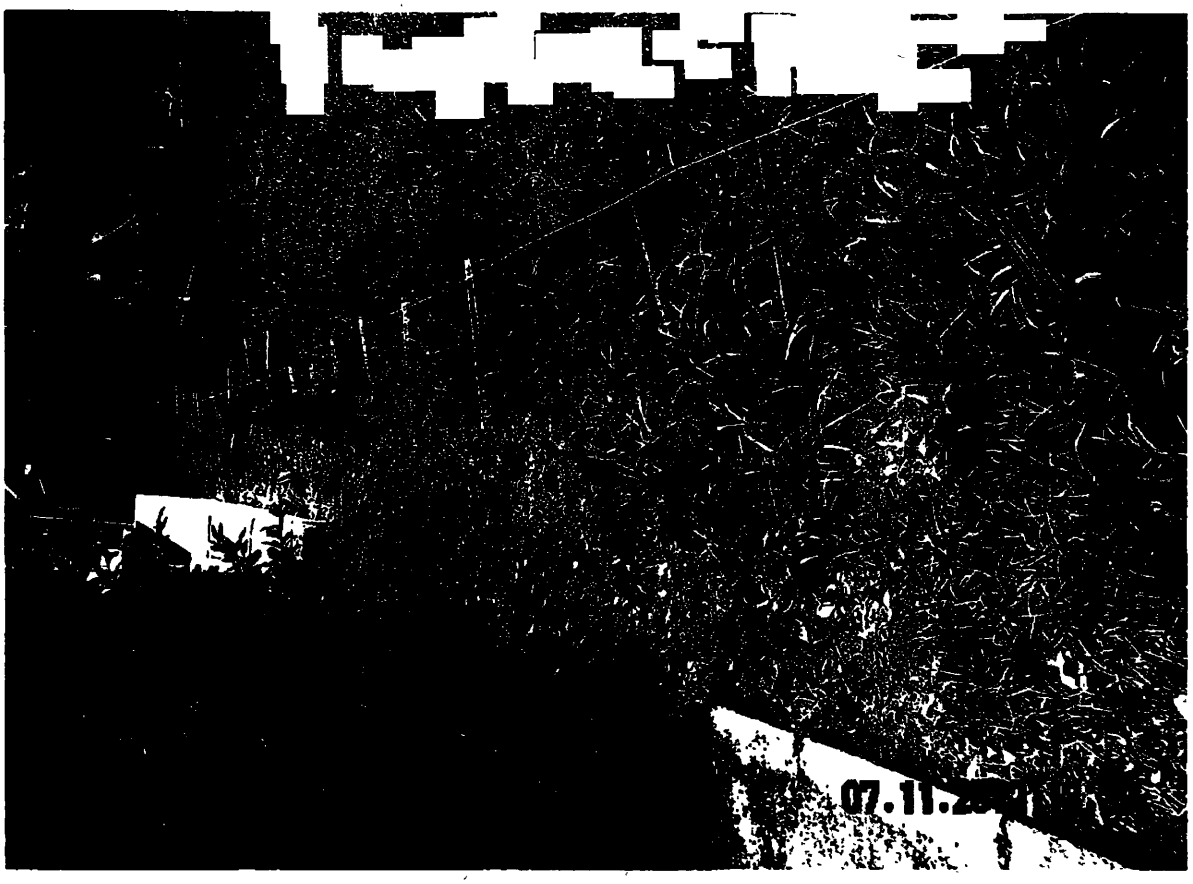

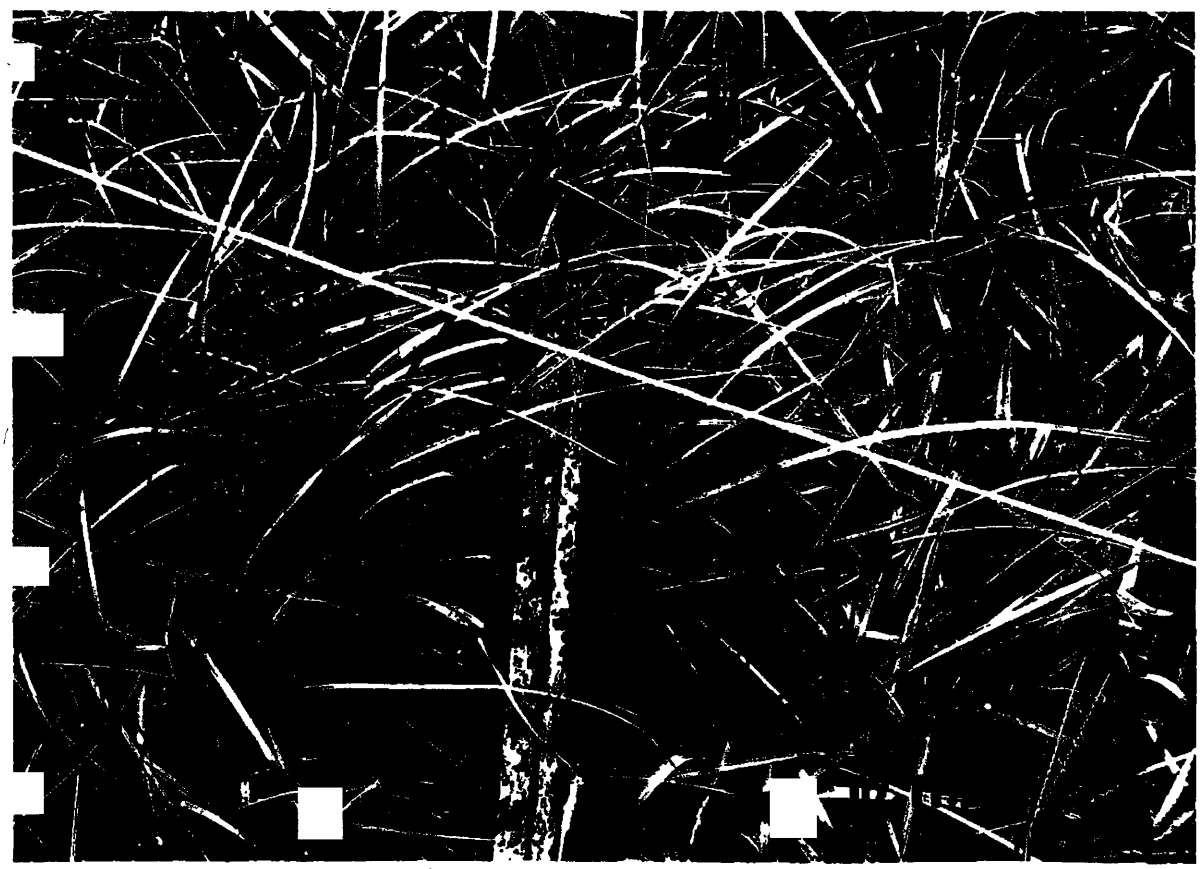

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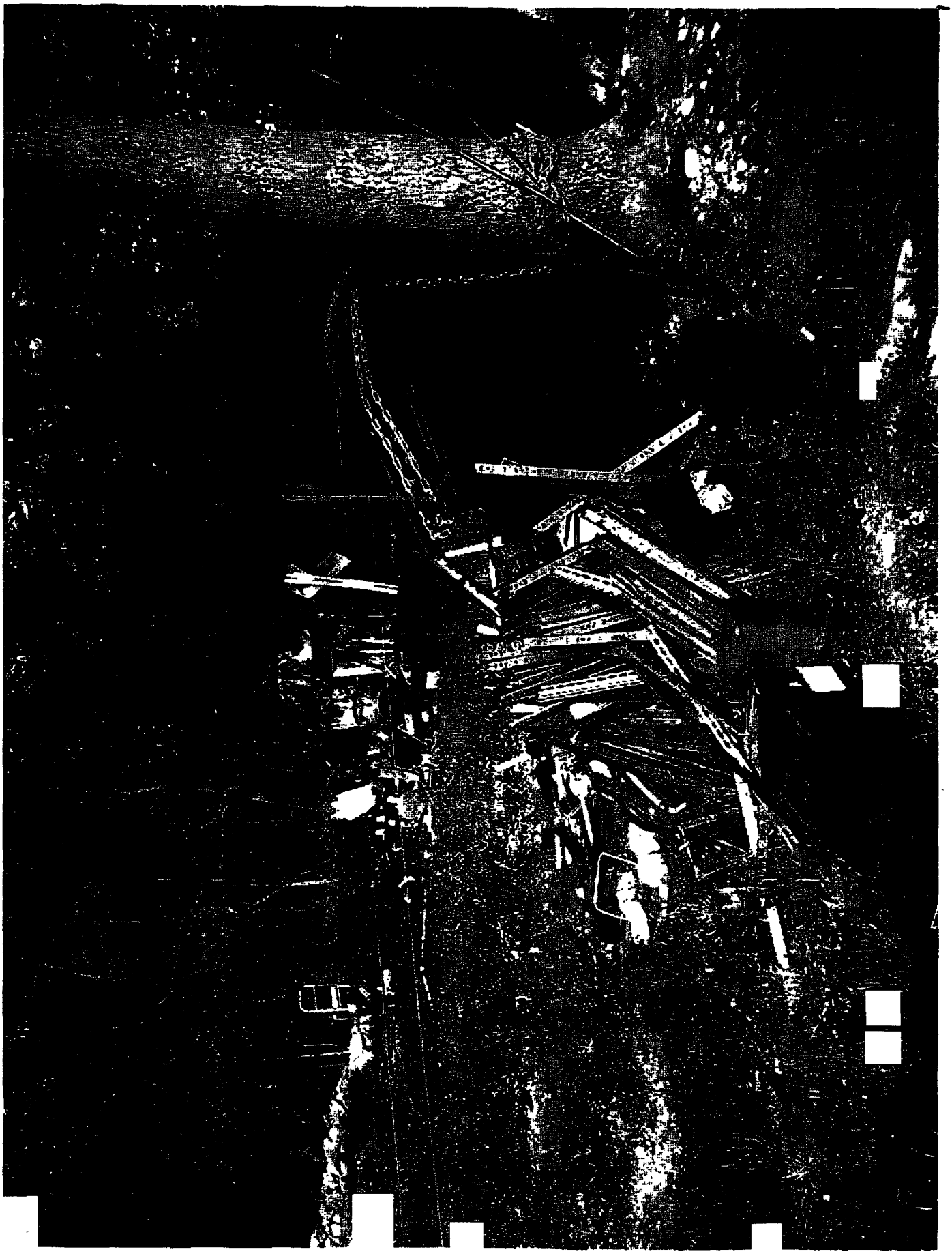

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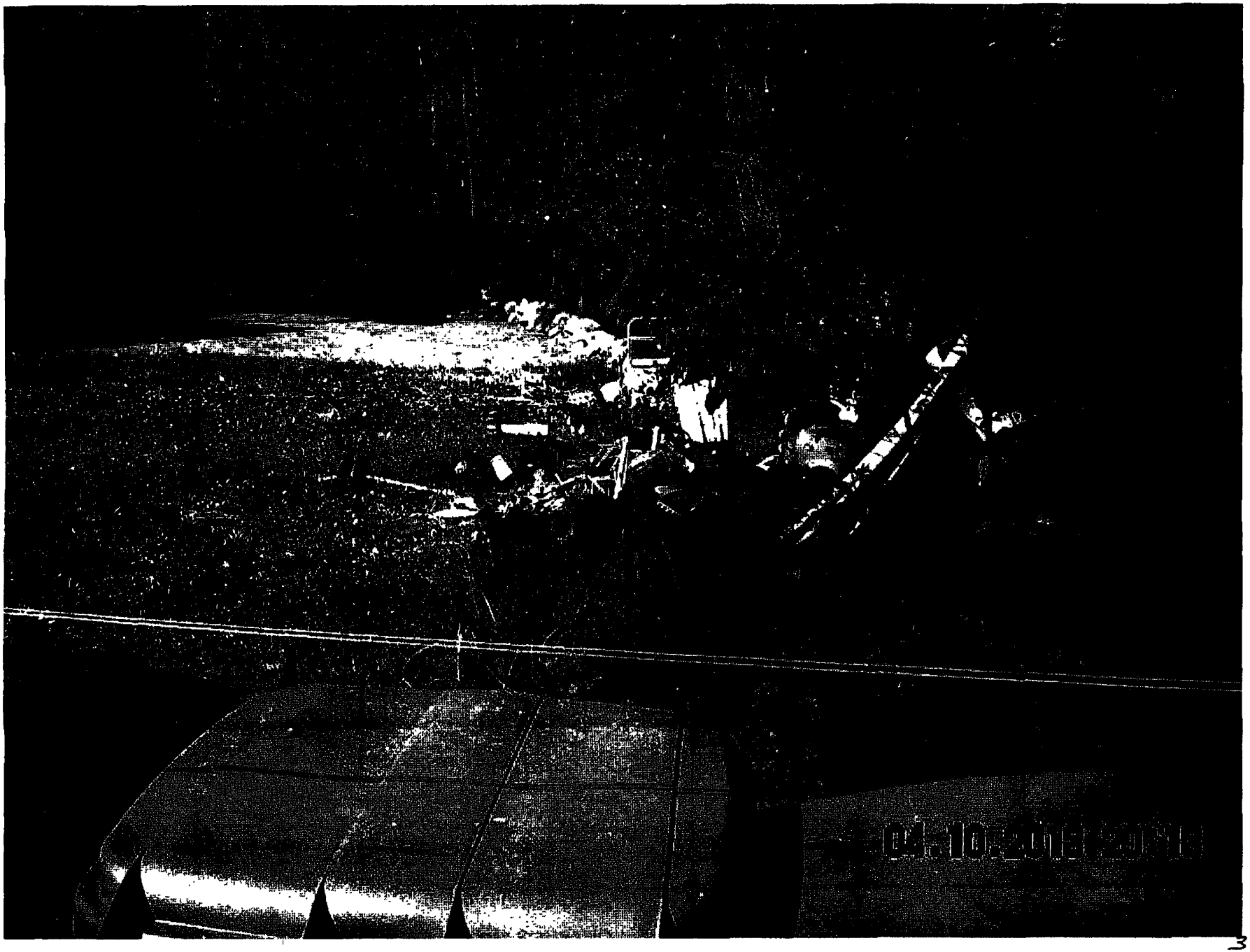

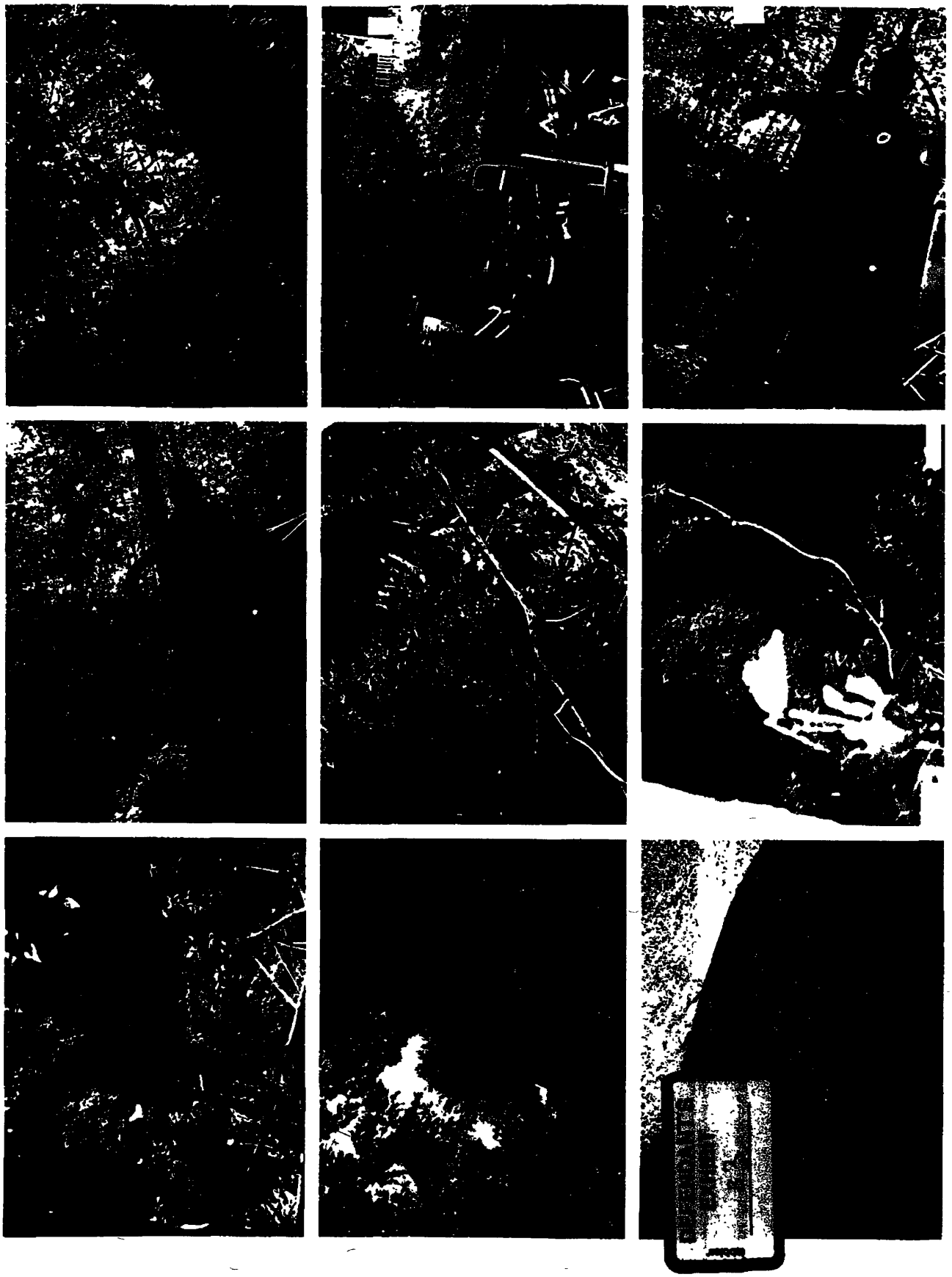

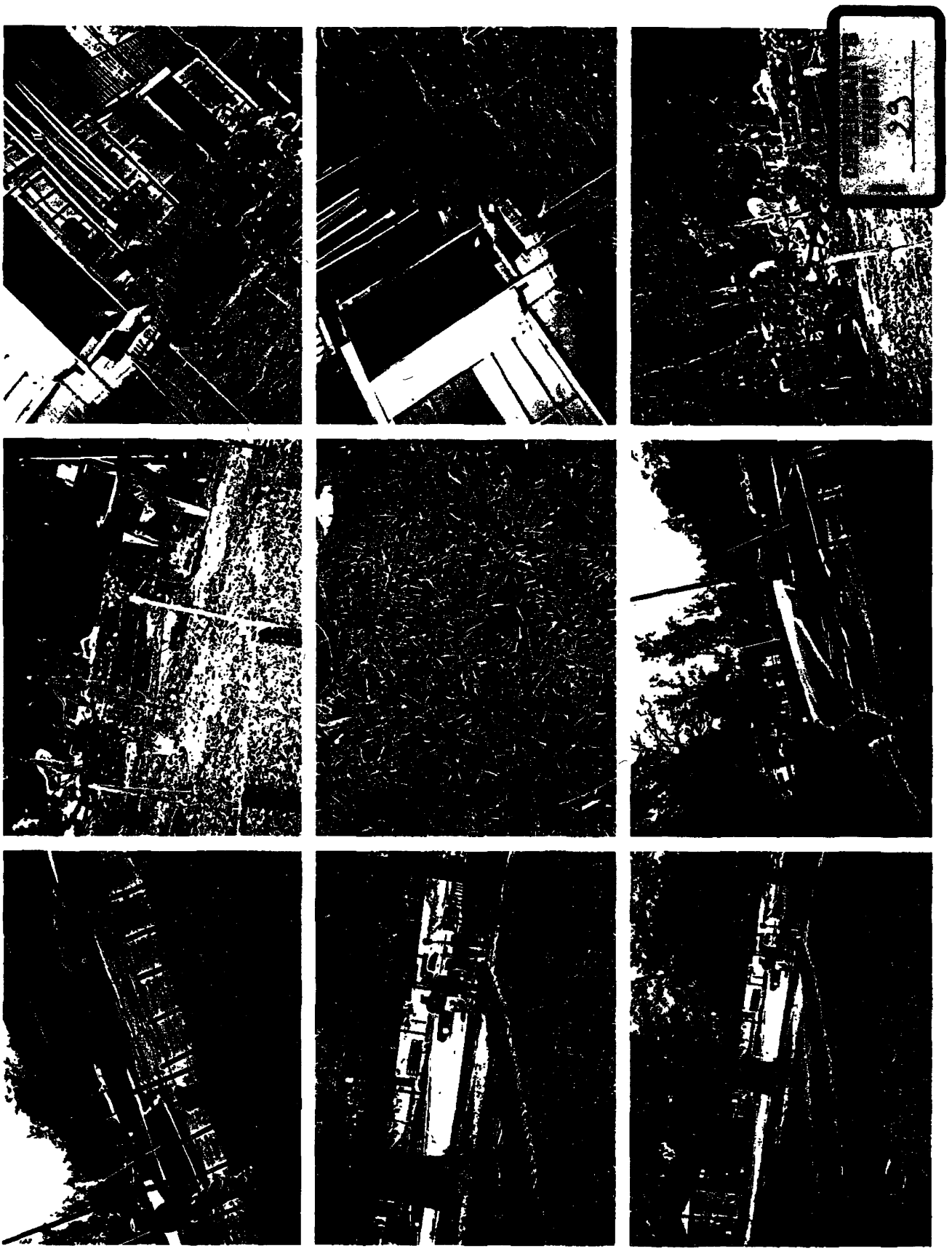

CITY OF COLUMBIA
SOUTH CAROLINA
MUNICIPAL COURT / P.O BOX 644 / COLUMBIA, S.C 29202 / 803 / 545-3150 FAX 803 / 733-8433

May 14, 2012

Honorable Jeanette W. McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia. South Carolina 29202

Re: City of Columbia v. Marie-Thérèse Assa'ad-Faltas.
Summons No(s).: 201310, Unlawful Acts, First Offense

Dear Mrs. McBride:

Please find attached the Transcript and Return of Notice of Appeal in the above-referenced case. Your attention to this matter will be greatly appreciated.

Sincerely,

Dana D. Turner
Chief Administrative Judge

DDT/nsa
Attachment as Stated

APPEAL TO CIRCUIT COURT
RICHLAND COUNTY FROM
CITY OF COLUMBIA MUNICIPAL COURT

2013CP4602522

Carl Solomon, Municipal Judge

NOTICE OF INTENT TO APPEAL

2013 JUN 17 AM 11:29
C.C.P. G.S.

CITY OF COLUMBIA,

VS.

MARIE ASSA'AD-FALTAS, MD, MPH

Charged with violation of three Rubbish Ordinances

Defendant.

On April 11, 2013, Defendant was convicted of violating one or more of three Rubbish Ordinances, 8-32, 8-41, and 307.1, and was sentenced on April 24, 2013.

Defendant, respectfully asks the Appeals Court to issue a stay of the sentence pending the appeal.

The appeal is based on an alleged violation of the due process clauses of the State and Federal Constitutions, on the absence of specific authority to adopt said ordinances, and the law against greater local penalties established in *Beachfront Entertainment, Inc. d/b/a Bert's Bar v. Town of Sullivan's Island,* 666 S.E.2d 912 (S.C. 2008).

Defendant paid cash bond to the City Court Clerk. Defendant respectfully asks this court to have an early hearing on the issues raise in this appeal.

Respectfully submitted,

Orin G. Briggs
Trial Attorney for Defendant

April 29, 2013

RECEIVED
MAY 01 2013
RECEIVED

646

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT FOR THE
	)	FIFTH JUDICIAL CIRCUIT
RICHLAND COUNTY	)	
CITY OF COLUMBIA, Plaintiff	)	
	)	COVER SHEET FOR
vs.	)	CIVIL ACTIONS
	)	
MARIE-THÉRÈSE ASSA'AD-FALTAS, Defendant.	)	DOCKET NO._____

The cover sheet and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed and dated. A copy of this Cover Sheet must be served on the defendant(s) along with the Summons and Complaint.

NATURE OF ACTION: (Check one category for the main cause of action)

( )	TORT - Motor Vehicle	( )	CONTRACT - Debt Collection
( )	TORT - Professional Malpractice	( )	CONTRACT - Employment
( )	TORT- Unfair Trade Practices, and Other Economic or Business-Related Wrongs	( )	CONTRACT - Construction
		( )	CONTRACT - Wrongful Breach
		( )	CONTRACT - General or Other
( )	TORT - Products Liability		
( )	TORT - General or other	( )	REAL PROPERTY
( )	PCR	( )	MINOR SETTLEMENTS
		( )	DOMESTICATE FOREIGN JUDGMENT
( )	GOV/ADM - Workers Comp	(X)	OTHER (Please describe)
( )	GOV/ADM - General or Other		APPEAL

JURY DEMAND ( ) YES ( ) NO

Note. Information requested on this form is preliminary in nature, and for administrative purposes only. The response to this request for information on jury demand merely indicates a likelihood that a jury trial will or will not be requested and does NOT constitute a demand for or a waiver of trial by jury pursuant to applicable rules or statues.

DOCKETING INFORMATION (Check one box)

( ) This case is subject to arbitration (all cases with monetary damages less than $25,000 are subject to arbitration, unless otherwise exempt).

( ) This case is subject to mediation (all cases not subject to arbitration must be mediated, unless otherwise exempt).

(X) This case is exempt from ADR, and certificate is attached.

2013 JUN 17 AM 11:30

RICHLAND COUNTY

Signature of Plaintiff, Plaintiff's Attorney

Post Office Box 667
Mailing Address

Columbia, S.C. 20202
City, State, Zip

(803) 737-4242
Telephone

DATE: JUNE 7, 2013

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2013-CP-40-3522
2013-CP-40-3525

City of Columbia, South Carolina,)
)
Plaintiff,)
)
vs.) TRANSCRIPT OF RECORD
)
Marie-Therese Assa'ad-Faltas,)
)
Defendant.)

December 13, 2013
Columbia, South Carolina

B E F O R E:

THE HONORABLE ALISON RENEE LEE, JUDGE.

A P P E A R A N C E S:

DAVID A. FERNANDEZ, ASSISTANT CITY ATTORNEY
FOR THE CITY OF COLUMBIA
Attorney for the Plaintiff

MARIE-THERESE ASSA'AD-FALTAS, PRO SE
Appearing for the Defendant

ALSO PRESENT: TRISTAN M. SHAFFER, ESQ.

DEBORAH M. McCURDY, RPR
Official Court Reporter

INDEX OF WITNESSES

(WHEREUPON, no witnesses were called during these proceedings.)

EXHIBITS

(WHEREUPON, no exhibits were introduced during these proceedings.)

DECEMBER 13, 2013

(WHEREUPON, the hearing commenced at 11:38 a.m.)

THE COURT: The next matters I have are both *The City of Columbia* v. *Marie Faltas*. One is Docket Number 2013-CP-40-03522, and the other one is 2013-CP-40-03525.

The City is represented by David Fernandez. Ms. Faltas -- Dr. Faltas is present and, as well, Tristan Shaffer; is that correct?

MR. SHAFFER: Yes, Your Honor.

THE COURT: And I understand that these are both appeals from Municipal Court. And while they arise out of different charges, I guess for purposes of these appeals we can keep them together.

And to the extent that we need to discuss them individually, if you can identify for the record which case we're talking about.

One is an appeal dealing with an assault, and the other is an appeal dealing with issues relating to a municipal statute related to unlawful acts, I guess, related to the property, rubbish ordinances. And that is 3525. The assault is 3522.

I understand that there were a number of

documents that were sent to the Supreme Court relating to Dr. Faltas' right to be able to proceed. And I think there is also a motion by Mr. Shaffer to be relieved; is that correct?

MR. SHAFFER: That's correct, Your Honor.

THE COURT: Based upon the order that was issued by the Supreme Court, I believe it was on November 7th of 2013, while the Supreme Court denied Mr. Shaffer's motion, they modified some of their previous orders relating to requiring Dr. Faltas to have counsel to represent her in civil matters.

And in that order dated November 7th of 2013, the Supreme Court indicated that Dr. Faltas may proceed *pro se* in criminal actions in which she is a defendant, and again reminded her that her right to proceed in criminal actions *pro se* is not absolute, but may be forfeited on a case-by-case basis in the discretion of the Court.

So based upon that, Mr. Shaffer, I don't have any problem relieving you of counsel as it relates to these two criminal cases, but these are appeals. While they are civil here, they are criminal in nature because they were arising out of criminal charges for which she could be imprisoned, and so I

will allow her to represent herself *pro se* as it relates to those appeals.

Anything further as it relates to the representation issue?

MR. SHAFFER: No, Your Honor. Well, nothing from me, Your Honor.

THE COURT: Okay.

DR. FALTAS: Your Honor, good morning.

THE COURT: Good morning.

DR. FALTAS: And it is always a pleasure to see Your Honor. I hope he doesn't leave yet, because there are issues about the record being complete which he should answer to the Court for. But I hope the next time I see Your Honor it will be in Federal Court.

THE COURT: Well, I have a record, being a transcript from the criminal proceedings below.

DR. FALTAS: Totally incomplete. The exhibits were not sent. As early -- as soon as Mr. Shaffer was appointed --

THE COURT: Well, now -- and I don't mean to interrupt -- I'm not trying to be rude, Dr. Faltas. I just want -- if there are exhibits that are before the Magistrate's Court, I can request those exhibits.

DR. FALTAS: Well, please do. But I want to report to the Court that Mr. Shaffer was derelict, totally derelict.

THE COURT: And I'm not going to address those matters.

DR. FALTAS: Okay, fine. Fine. But on my side, while representation was forced on me, I did what I could by reminding him several times to get the exhibits, not only the exhibits. This -- as large as the transcript seems, it is incomplete, because there were three prior hearings, and there were jury selection issues that I asked to be transcribed.

Again, at that time, I was being forced to act through Mr. Shaffer. And I want him, as an officer of the court, to tell Your Honor that I reminded him of that early on.

But, you know, all of this might be kind of moot because it is clear. And I was directed that I may submit a proposed order, and I did.

THE COURT: Yes, ma'am, I received those.

DR. FALTAS: All right. It is just we don't even need to worry about anything. It is structural error. The Supreme Court itself in the 7 November 2013 order acknowledged that the denial

of my right to self-representation violated *Faretta*. And shortly before the November 7th order, a majority of the Court, with the current Chief Justice in the minority, said that in South Carolina we will not even deny the right to self-representation based on mental health issues. And they reversed a death penalty and the conviction solely because of the structural error of denial of self-representation.

So I think we can make it very brief and do this. However, Your Honor knows the respect I have for you, Your Honor also knows my courage. I am not at liberty to say the content of the complaint I filed against the current Chief Justice's re-election, but it was made public record by the Judicial Merit Selection Commission that I had filed a complaint against her.

And in the public record, when they listed the secret ballot, they said something like 200 people said she was unqualified, I think, by secret ballot. But I was the only one in the length and breadth of South Carolina who had the courage to put my name on what I say. And now I have the courage. And I hope Your Honor has the same courage to look into a four-year history of total

deterioration of the court. Perjury is a crime.

THE COURT: Let me -- and, Dr. Faltas, you know that I respect you. And I understand that -- and I realize your abilities and your arguments. But I am going to try to -- I am here to hear an appeal, and I am going to try to keep them focused within those issues, those legal issues which I have to consider.

Now, you raised an issue about representation, and you referred to -- and I'm not talking about *Faretta*, I'm not talking about the U.S. Supreme Court decision, I believe you indicated that there were South Carolina decisions that held that the right to self-representation was inviolate. And so I would like for you to be able to tell me, if you can cite to it or tell me which case that is so that I can make sure that I'm familiar with it.

DR. FALTAS: Yes, Your Honor. In the proposed order -- and I looked to see if it had reached publication yet, but it has not. It is *State* v. *Barnes*. And it was decided October 16th, Mr. Shaffer? October 16th, 2013. And in the proposed order I have the Shearouse number, the Shearouse Advance Sheet number.

I'm sorry, Your Honor, because of a knee

issue, may I address the Court from a seated position?

THE COURT: I'm sorry?

DR. FALTAS: Because of my knee, may I address the Court from a seated position?

THE COURT: Yes, ma'am, as long as you are seated in front of that microphone so we can make sure we hear you.

DR. FALTAS: Let me pull it over.

THE COURT: Because I'm looking at your proposed order, and I'm trying to --

DR. FALTAS: At the very top, Your Honor, I mean, the very --

THE COURT: I see it, yes, ma'am. *State* v. *Barnes*, Opinion Number 27322, decided October 16th of 2013.

DR. FALTAS: The last time I looked at it, which was very recently, it didn't have either the South Carolina or the Southeastern 2nd citation, but *State* v. *Rivera* did. And in it -- and that was unanimous. They went -- and I quoted at length from it -- structural error means just that. You can't get past it. You don't need to look at prejudice, you don't need to look at anything else.

THE COURT: And that is cited in your order?

DR. FALTAS: Yes.

THE COURT: And that is 741 S.E.2d 694, a 2013 case?

DR. FALTAS: Yes, Your Honor. And, I'm sorry, I didn't -- I forget the pages that I quoted from, but I quoted them verbatim. And mostly -- mostly they quote from U.S. Supreme Court decisions that explain structural errors.

And as it stands now the U.S. Supreme Court's jurisprudence has four or five types of structural error: Denial of self-representation; denial of the choice of one's counsel -- which is a little different, but in my case it merges because my choice was to be my own counsel; denial of instruction -- denial of the reasonable doubt instruction; denial of a representative jury of the community; and trial before a bias judge.

So these are five structural errors that the U.S. Supreme Court has long explained, and finally the State of South Carolina acknowledged them.

THE COURT: Now, is that the only claim that you are standing on today as it relates to these cases?

DR. FALTAS: Absolutely not. Absolutely not.

THE COURT: Then --

DR. FALTAS: And, in fact, I want to say that there are other areas of structural error.

The bias of judge, which I have been stating that I have civil lawsuits against the City of Columbia, the City of Columbia Municipal Court, the --

THE COURT: Well, let's take up your appeal in the 3522 case. That was the trial before Carl Solomon, Municipal Court judge, on the assault claim.

DR. FALTAS: No. No, 25 was the property.

THE COURT: If I said 25, I didn't mean 25. I said 3522. If I misspoke, I'm sorry.

DR. FALTAS: No, I'm just trying to keep --

THE COURT: Okay. I'm just saying -- and that's fine. I'm referring to 2013-CP-40-3522.

DR. FALTAS: Yes, Your Honor.

THE COURT: And from what I understood by reading a portion of the transcript -- and I did not read the entire transcript -- it related to assault claims.

DR. FALTAS: One. One.

THE COURT: An assault claim?

DR. FALTAS: Yes, Your Honor.

THE COURT: And so there is a transcript. You

were at that hearing represented by Ted Lupton.

DR. FALTAS: Against my will.

THE COURT: I understand. And that issue you have already raised. So I'm looking for what are the legal errors that you are asserting as it relates to that particular appeal.

DR. FALTAS: Your Honor, first of all, if you go -- I don't know how far you went in the transcript, but very early on I was -- I had also asked Mr. Lupton to ask for Judge Solomon to recuse, and he refused to. So that never got on the record. So one of the structural errors is that the City of Columbia Municipal Court is owned and operated by the City of Columbia, which is my adversary in a civil -- in several civil lawsuits in Federal Court.

Also -- also, on a federal level -- and there is a very sophisticated federal argument that I wish to bring in Federal Court as soon as I can catch my breath, and that is something that my thinking about it evolved, and also contemporaneously cases from the U.S. Supreme Court came down along with my line of thinking.

THE COURT: Let's talk about --

DR. FALTAS: That's what I'm talking about.

THE COURT: Let's talk about the legal basis for the appeal separate and apart from your argument that Judge Solomon should be recused because he is a municipal judge that is appointed by the City of Columbia and there is a problem with that.

I understand that you have made those arguments before, and I understand those arguments, and so we can move on beyond that one.

DR. FALTAS: So what I'm saying is the City of Columbia cannot have a court.

THE COURT: Cannot what?

DR. FALTAS: Cannot have a court.

THE COURT: And let's move beyond that, Dr. Faltas. I'm looking for the substantive -- as it relates to the charge and the evidence that was presented in the trial.

DR. FALTAS: Okay. But could I just put on the record that the federal constitution, what makes the United States the United States is that it is the unity of only two levels of sovereignty: Federal and state. It is not the United Townships of America, it is not the United Citizens of America, it is not the United People of America, it is the United States of America.

And in *Arizona* v. *United States*, that immigration case, it was clearly stated that there are only two sovereigns. So municipalities may not legislate, may not have court, may not do -- a municipality or a county.

And along with that was also Justice Scalia's unanimous Supreme Court in *Jinks* v. *Richland County, South Carolina*, from the State of South Carolina, which said No, no, no, only states have sovereignties, counties are not sovereign, any political subdivision is not sovereign.

That gets us to the issue, since only a sovereign may legislate -- also, a sovereign may prosecute for crime. And that is in the South Carolina Constitution that the criminal laws shall be uniform throughout the state.

Also, in the case of Barney Giese with the Richland County magistrate, it was decided that only the state may prosecute crimes. And this is not anything novel. So I shouldn't even be tried, not because of bias, no one should be tried there.

What I was charged with under a city ordinance was for simple assault. The City may not legislate, and even if it did, that issue was preempted by the Crime Omnibus Act. There is a

state assault charge.

And to show you how ineffective counsel was that was forced on me, Mr. Fernandez himself opened by saying that he thinks the issue -- that the charge is preempted by state law. And Mr. Lupton said, Yes, I know that Dr. Faltas thinks so as well, but I'm not going to make that argument.

So it was insane. Even the opposing counsel was conceding that it was preempted, but my own counsel, over my own objection, was saying No, it is not preempted. But I'm saying beyond preempted, it could not be legislated *ab initio*.

And if Your Honor looks at that argument -- again, may I? Just the knee issue.

THE COURT: Yes.

DR. FALTAS: Thank you. It is totally void for vagueness. Totally void for vagueness. There is absolutely no definition of anything that is prohibited by the ordinance.

THE COURT: Yes.

DR. FALTAS: But if we go to the common law definition of assault, which was from *State* v. *Sanders*, a 1912 case, and the definition is the offer to do injury, to do bodily injury with the present ability to do so.

If we look at my false accuser's testimony, she said, I just saw her coming with a piece of paper in her hand. And in another transcript she said, I did not know what she was going to do. So that precludes my having made an offer of bodily injury. And even if I had, which this is her testimony by which she is concluded, she said, I did not know what she was going to do. So there wasn't any gesture or anything of offer to do bodily harm.

Then she acknowledges that the paper was trying -- I was trying to hand her something saying, No, you cannot come into my apartment, because she admitted on cross-examination that she had herself -- not her lawyer, herself -- sent me a notice stating that, We are going to come to your apartment, enter it, and photograph it inside on a certain day.

So the claim that she did not want any contact with me is debunked by her own testimony. They were trying to come into my own apartment, into an enclosed space. So that completely belies any claim that she did not want any contact with me.

Even after that, after she claims she was crazed and totally -- and I will get to that,

because there is a serious issue of perjury, but --

THE COURT: Well, I am not going to address the issue of perjury.

DR. FALTAS: Well, I'll just put it in the record. Your Honor knows that I like to make my record.

THE COURT: I know. And I'm just going to tell you, Dr. Faltas, we are not going to be here all afternoon on these.

DR. FALTAS: Well, I'm sorry, I have been four years. No one in the system knows that they abused the system to bring false charges. Somebody --

THE COURT: Just -- Dr. Faltas?

DR. FALTAS: I'm sorry. The fact is that I expect more from Your Honor than from other people.

THE COURT: Dr. Faltas?

THE BAILIFF: Ma'am?

THE COURT: I am more than happy to hear the arguments, but your arguments need to be succinct. And I understand that once you get started you want to go through the entire history that goes back four years. And I understand that you have been living with this particular issue for quite some time. I understand the hardship that it has created for you. I'm aware of all of those things.

I'm aware of the tortuous history of all of these cases. While I don't know the facts related to all of them, I understand that they are all intertwined, and I'm familiar with a good portion of it. And so I want to make sure that you make your arguments for the record, but you are -- there are just certain arguments that you need to preserve and then we can move on.

DR. FALTAS: Okay.

THE COURT: I am not going to address perceived perjury of the testimony, because that is a separate issue altogether.

DR. FALTAS: It is not perceived. It is according to public record.

THE COURT: And I understand that that is your argument and that is your take on it. And I respect that. You are entitled to your view of what the evidence is. But I also want to make sure that you understand that I'm not here to address a perjury issue. I'm here -- and I understand that you couched it in terms of credibility of the system. And I understand -- I have been through some of the information that you have filed with the court. And some of it, Dr. Faltas, is not specifically -- while you can raise it as something

that should have been presented, I'm not going to go through and make a determination as to whether or not it was perjury or not perjury.

DR. FALTAS: Actually, Your Honor, I know better than to ask an appellate judge to make a credibility determination. What I am making as an issue is not only is it the supervisory power of the judge, it is the supervisory duty of any judge who becomes aware of prosecutorial misconduct, or misconduct by a lawyer, or misconduct by another judge, or misconduct by a court administrator, it is not only the supervisory power, it is a supervisory duty.

But I will put it on the record succinctly, as Your Honor asked, and leave it to Your Honor's conscience. Okay?

So we're talking about the elements of assault.

THE COURT: Yes, ma'am.

DR. FALTAS: Which is, not any -- you know, totally unreasonable person, the standard is a person of ordinary firmness. Okay? So at the beginning she said, I didn't know what she was going to do. So there was no threat. Because she didn't say, She threatened to come and kill me, or,

She threatened to come and beat me. She said, I saw her with a paper in her hand, and I did not know what she was going to do.

The second thing is that she claimed that the contact was unwanted. First, that is not the criminal standard, that is the civil standard. But that is belied by her admission that she had wanted to come to my apartment. That is contact.

Then she admitted that even after that weekend she came and knocked on my apartment door in order to enter it, and I didn't open. And that was after that day. So that completely rules out that she was afraid of contact with me or that she did not want any contact with me. That is her own testimony. Okay?

Then she admitted that there was no injury. Totally no injury. But then she volunteered, she said, I'm still on medication for it. She was testifying -- I'm sorry, I am about to cover it. She was testifying on April 25, 2013. And she claimed to have seen some doctor on January -- in January 10 -- in January 2010, which would have been over three years since -- before her testimony, and almost four years since the incident. And she claimed to have been on

medication for it. Okay?

There has been a discovery request sent which clearly says, All physical and mental examinations which are known to the prosecution to exist or by the exercise of due diligence are knowable to the prosecution and are either important for the Defense or are going to be used in the case of chief.

That was not only the case of chief, that was the only point, because they admitted there was no physical injury, there was no offer of physical injury. She claimed that she had mental injury and she claimed that she had seen a doctor who kept prescribing -- she didn't see the doctor until January 2010, and he, or she, or it, whatever passes for a doctor in these people's mind, kept prescribing for her medication until April 25, 2013. Okay?

Of course, discovery issues in and of themselves constitute reversible error. And in *Kyles* v. *Whitley*, the U.S. Supreme Court said the prosecutor cannot say, Oh, that didn't drop on my head from the ceiling. The prosecutor had a duty to find out what is there, whether it is exculpatory or inculpatory, or neutral, so long as

it is relevant.

Here there is no question of relevance. And there is no question that the discovery request was served, because in a hearing before Judge Barber -- and I have the transcript -- Mr. Lupton said he did file a Rule 5 and Brady motion. And I have that language.

The other possibility is that she did not go to a doctor and which is more likely -- because a doctor who keeps prescribing some controlled substance for three and a half years really should have his or her license revoked. So it is either a discovery issue, which in and of itself is reversible, or a perjury issue, which, again, should be subject to the Court's supervisory power and duty.

Now, then she was confronted with having -- but before we even get to that, I wanted a jury trial, but there were two issues -- and, again, these are structural. The first issue -- and that is one of the few things for which I give Mr. Lupton credit, he argued brilliantly, that you cannot do what you have done, which is from the same jury venire, tell them that Dr. Faltas has five charges against her, but we will choose one

jury to try each charge and we won't tell any of the juries what happened to the other charges. That immediately places in their head the idea that Dr. Faltas is a serial criminal.

So that was something that was -- it may not be in this transcript, but it would be in the transcript. And in one of my submissions I attached a copy of the audio CD. And I have requested that pretrial because Mr. Lupton did argue that point well.

So I was still going to be tried before a jury that was picked from a venire that was told Dr. Faltas has numerous criminal charges against her. And that jury was not going to hear that I had been acquitted from all the other charges.

In addition, again, the structure in which would be more in the case of *State* v. *Rivera* of the State Supreme Court, upfront Judge Solomon said, I will not allow you to discuss -- to testify about the background between you and my accused -- between me and my accuser. And I would have submitted plenty of evidence you need to present a complete defense, the right to put a complete defense.

And, again, the U.S. Supreme Court has spoken

in *Holmes* v. *South Carolina*, any rule or procedure that prevents a defendant from putting a complete defense should be struck down.

So they were just out of the blue, total whimsical that I cannot go to the background of why my accuser would have a bias, a motive to bring false accusations against me. And, more significantly, I would not be allowed to testify, and that was the last one of the, what I call the Steele and Company charges, that all of them had been resolved in my favor, especially the big two harassment -- four harassment charges that I tried myself five days *pro se* before the Honorable Judge Newman. And in the middle of the trial he told me, You have been most pleasant and gracious. And I'm reading the transcript. I found out there was even a lawyer who was present to learn from the trial under the -- whatever section that requires certain lawyers to attend certain trials to observe them. So I had been exemplary. And for -- I'm sorry.

THE COURT: Let's get back to the transcript.

DR. FALTAS: Yes, ma'am. I'm with Your Honor. I'm self-disciplined enough to step back. But it is very important also to realize that one of the two false harassment charges, which were both

resolved in my favor, based on my *pro se* advocacy, one of them was alleged by Teresa Ingram and the other was alleged by the same Dinah Steele.

And the one alleged by Dinah Steele never came to trial, because I'm sure the prosecution knew by February 2010 that they had no case. But they still kept it on. This is relevant to the discovery. Not only Mr. Fernandez had the duty, but this supposed January 2010 visit by my false accuser to a psychiatrist -- and it had to be a psychiatrist because a psychologist cannot prescribe medication -- should have been produced to me. Even in discovery in the General Sessions it was never produced.

So we go back to another important -- so I was precluded from testifying to a jury and under penalty of contempt of court. And I have been previously wrongly imprisoned for contempt of court by Marion Hanna. And when I came out of prison, I took the tapes to the Judicial Conduct Commission, and so I knew that I could --

THE COURT: We are --

DR. FALTAS: Okay. All right. I was precluded from presenting a complete defense under penalty of contempt of court. So that is the legal

issue.

In addition, that time my fractured knee was at its height, and I was told I would not be even allowed to testify from the table, I would have to go -- so in the transcript I said, I am waiving jury trial under duress.

I did not really waive the jury trial. I said I waived it under duress. And the duress was the threat of contempt of court if I gave a complete defense, the fact that the jury panel was improperly selected, and the fact that I could not physically reach the stand to testify to the jury.

In fact, I told Judge Solomon, I don't take medication because I'm against medication unless absolutely necessary, so any movement would cause me to moan with pain.

And Fernandez said, If she becomes a distraction she will need to be removed from the courtroom.

So that was absolutely under duress: Physical, legal, and factual.

THE COURT: Okay. Let's move on to the next one.

DR. FALTAS: The next point is they claim that Charlene Crouch was an independent witness. And

the fact that the City bold-face lied about her criminal record. And this has of course implications. And, again, this is an immediately reversible issue. *Napue v. Illinois*, *Giglio* v. *United States*. Anything that -- in fact, in South Carolina there is *Riddle* v. *Ozmint* that says the failure to correct false evidence is as reprehensible as its presentation.

THE COURT: And what do you claim was false? What do you claim the record was?

DR. FALTAS: Okay. She had been arrested on April 22nd, 2012, for public drunkenness on what -- and I did cite in one of my submissions the body of the incident report.

THE COURT: And you understand when you are testifying it has to relate to convictions? It must relate to convictions, not arrest?

DR. FALTAS: Of course. And that is where the lie was. She was arrested on April 22nd, 2012, for public drunkenness. And from the description of the incident report, she was apparently threatening. And Your Honor knows that all of this arose from the land that mother and I bought next-door to her.

Charlene Crouch was no longer a tenant. She

had moved. And she still frequented a tenant there by the name of Charles White, who had testified in another hearing, testified in court that she was a prostitute and that he was paying her money in exchange for sex and that she was sometimes rowdy.

And I provided Mr. Lupton with that recording of sworn testimony in a Magistrate's Court. He burned it on a CD. He filed one copy with the Municipal Court and he served one copy on Mr. Fernandez. And I know that because in the hearing before Judge Barber I raised it and Mr. Lupton said that he did serve this one-gigabyte CD on Mr. Lupton -- on Mr. Fernandez.

THE COURT: And so what does that have to do with the criminal record?

DR. FALTAS: I'll tell you -- I'll tell you. Okay. Three days later, which was April -- she was arrested and imprisoned. An order for her not to return to 300 Byron Road was issued by the police officer. Three days later, she pled guilty before Judge Jenkins.

THE COURT: To what?

DR. FALTAS: To public drunkenness. But the City, which knew it was going to use her as a witness against me, never reported that guilty

plea, which is a conviction, to SLED.

And part -- apparently part of the sentence from the City was that she does not go back there. But she needed to go back there to get money from Charles White. And Charles White doesn't give her money unless she gave sexual favors. So she had -- she was beholden to him. So Mr. Fernandez said, "No, it is still pending." A year before, to the day, she had pled guilty and was sentenced. And even if Mr. Fernandez had been innocently mistaken, which he could not have been, because he had a duty to get the criminal record of his witness, he had a duty after that to research it, and he had a duty to present correct evidence to correct it. And even if he didn't, the witness herself knew that was false. She knew that it was false that the charge was still pending. It wasn't. She had pled guilty to it. And it has to do with the City not forwarding it to SLED to like water down the criminal record. And it has to do with the fact that in return for her false testimony against me, she was allowed to go back to that area despite the trespass notice. And that area is owned by Dinah Steele, my false accuser.

In addition, that wasn't the only

drunkenness-related conviction on Charlene Crouch's record. We have a DUI conviction before. We had this public drunkenness. And --

THE COURT: And?

DR. FALTAS: Okay. I'm sorry. I thought that the police officer --

THE COURT: They always -- they look in. That is not a big deal.

DR. FALTAS: December 2012 Charlene Crouch went and sexually molested a young man who is physically disabled with the functional equivalent to a child.

While we were trying to settle her criminal record -- and this is key -- she committed the crime. And, again, there is a conviction. And I have the transcript of her guilty plea. But she committed the crime on December 23rd, 2012. She was arrested in June on June 16th -- or June 18, 2012. She had a preliminary hearing July 2012. She had three appearances. Apparently one appearance there was some mix-up and there was a warrant issued for her arrest. And ultimately she pled guilty on July 11th of 2013 before Judge Barber. And Judge Barber sentenced her to one year suspended.

THE COURT: So basically it was still pending at the time the trial came along?

DR. FALTAS: However -- however, Mr. Fernandez says she is not even aware of it and she had not been to court for it. That was a clear lie, because she was aware of it. And she had been to court for it six times before the actual guilty plea. And in the guilty plea she said she does not remember because she was very drunk. That was basically not her defense because she pled guilty but what she said was mitigation.

So we have at least three instances: A DUI conviction, the public drunkenness conviction, and the molestation of that young man that involved drunkenness.

We had the right to examine that witness for reliability.

THE COURT: Not as to the molestation, no, ma'am.

DR. FALTAS: Not --

THE COURT: If, in fact, there were convictions for driving under the influence, you can ask -- and on the public drunk, those -- I guess those would have been -- if the Rules of Evidence would have allowed you to try to impeach

her with those, then that would have been appropriate.

DR. FALTAS: Yes. But we were lied to. We were lied to. We were told that it is still pending, when she had already pled guilty. And I am saying that it is not just -- I'm sorry. Once again. It is not just, you know, a crime of dishonesty that is impeachable. The rule says anything related to the needs of the case according to justice. And here there would have been a very reasonable issue: Ms. Crouch, You get too drunk too often. Were you drunk that day? Do you -- if you couldn't -- in July 2013 you couldn't remember what you had done in December 2012 because you were drunk, how can you remember in April 2013 what you claim to have seen in September 2009?

THE COURT: And those issues as to whether or not the convictions could be used were raised before the trial judge.

DR. FALTAS: No, ma'am, they were not, because we were told there were no convictions, when there were convictions. And we were told on the one that she was convicted of later she was not aware of it. She had not been to court for it.

THE COURT: Well, even if she had been to

court, it still wouldn't have been able to be used against her if it is not a conviction. So --

DR. FALTAS: What I'm talking about is the habitual drunkenness, which --

THE COURT: And you can talk about convictions, yes, ma'am, and that would be appropriate.

DR. FALTAS: But, again, let me just -- to make it clear -- we were lied to.

THE COURT: I understand. I have heard you. You are saying that you were lied to and that they didn't disclose the fact that she had at least two prior convictions. Anything related to the molestation would not have been able to be used, regardless of whether she was drunk or not. But you would not have been able to talk about those matters either. But I understand that you are saying that you were not -- that she had convictions and you were not told about the fact that she had convictions.

DR. FALTAS: Yes. Yes. Thank you. And so she also said something which is objectively proveable a lie. She started presenting -- and I had to remind Mr. Lupton to sequester the witnesses. Had I not reminded him, she would have

given the identical story of Dinah Steele. But I reminded Mr. Lupton to sequester the witnesses.

Sure enough, she gave a very different story, but she freelanced. Charlene Crouch said it was she who called the police. First she said, All I know is that police were called. Then she said, I think I called the police. Then she said, I went in and called the police. Okay?

First of all, in discovery we didn't get any police call from Charlene Crouch. Not only that, when they were trying to frame me for harassment, Columbia Police Department, a woman by the name of Amanda Blanton, she interviewed Crouch, and Crouch gave a statement saying, Dinah called the police and then called me and said, Would you come with me?

So that, again -- and, please, Your Honor, I'm sorry to be putting it again on the record -- prosecutorial misconduct is subject to the Court's supervisory power and duty. And duty.

THE COURT: And is it preserved below? Did you raise it in the court below?

DR. FALTAS: In the court below I was gagged, as you know.

THE COURT: I recall that you were gagged, Dr.

Faltas. But you had your opportunity through your counsel to raise it below.

DR. FALTAS: You are assuming that my counsel does anything --

THE COURT: I understand what you are saying, but there was an opportunity to raise it. And I understand that you are telling me, then, that your counsel did not raise it below?

DR. FALTAS: Not only that, I have where I asked him to do that before the fact and after the fact, and all he did was run to Judge Barber, Oh, Dr. Faltas is harassing me.

THE COURT: And that is a whole other issue. Okay. And I understand that you are claiming you did not have an opportunity to raise any prosecutorial misconduct at the trial below, and you are claiming that that is prosecutorial misconduct.

DR. FALTAS: Definitely. And I am again stating that the Court cannot look away from it. And regardless of what happened -- I mean, the State Supreme Court reversed the *Quattlebaum* conviction and he was reconvicted because Donnie Myers had listened to attorney-client. So there are some things the Court must do as a matter of

principle. Okay? So --

THE COURT: What is the next point?

DR. FALTAS: Actually, Judge -- and I thank Your Honor for having asked that question because I would have forgotten to tell you that. I appeared before Judge Solomon after that as the witness, the alleged victim. Teresa Ingram was convicted. So I am the proven victim now. During that day I did present to Judge Solomon that material. And I presented it in order for it not to be *ex parte*. I had also sought federal habeas and had appealed to the Fourth Circuit and had listed all of those matters in my appeal to the Fourth Circuit. So I presented him with my motion before the Fourth Circuit, which listed all the prosecutorial misconduct issues. The lying about the record, not giving medical record. So, yes. So, yes. It was presented to Judge Solomon on July 26, 2013. That is the day he sat and tried my allegations against Teresa Ingram. And she was convicted.

THE COURT: What is the next error that you are claiming?

DR. FALTAS: If it pleases the Court, it would be a help to me if Your Honor would list the ones that I covered so I could remember?

THE COURT: You've covered the recusal issue. You have covered the charge under the City ordinance being void for vagueness. And challenging the testimony of the complaining witness. As to the assault charge, not allowing a complete defense, waiving jury trial under duress relating to a jury improperly selected and not being able to get to the jury stand because of your physical condition. You testified -- I'm sorry -- raised the issue about Charlene Crouch not being an independent witness. The City lied about her criminal record and other convictions and prosecutorial misconduct relating to the record, medical record, not providing all of the discovery. And --

DR. FALTAS: And I think I answered Your Honor's question about having raised issues below.

THE COURT: You did. Is there another one?

DR. FALTAS: There was one other issue about prosecutorial misconduct. In arguing, Mr. Fernandez claimed that Charlene and I were friends. By that time I had sued her and he had received, through Mr. Lupton, the reciprocal discovery, the one-gigabyte CD that included testimony before Magistrate Newsome about my having

sued Charlene and about a prostitution client testifying she's a prostitute. So when Mr. Fernandez said that she had no dog in this fight and she was on friendly terms with me now, that he was giving false information to the Court. And of course Mr. Lupton was too ineffective, Your Honor, to object.

In addition, Mr. Fernandez's argument about the standard is totally false, totally incorrect. He said the civil and criminal definitions of assault and battery are interchangeable in South Carolina. That is absolutely incorrect. Assault is an offer to do physical injury with the present ability to do so. Battery is an infliction of physical injury. There can be assault without battery and battery without assault. Also, the standards are very different. In a civil assault or a civil battery, it is unpermitted touching. Many surgeries that are performed without informed consent sometimes come under battery. But unpermitted touching is a civil standard. The criminal standard is here in the statutory definition, not all definitions, but the state statute definitions. And it also says that a person of ordinary firmness --

THE COURT REPORTER: I'm sorry, you need to speak up a little bit.

DR. FALTAS: A person of ordinary firmness -- that a person of ordinary firmness would feel or take that as a threat of injury.

I'm sorry, do I need to spell ordinary firmness?

THE COURT: No, you don't need -- she can spell it, she just needs to hear you.

DR. FALTAS: Ordinary firmness. That is the standard.

In addition, this woman, my false accuser, Dinah Steele, on the record, she is taller than I am, and she testified that she is athletic. Her MySpace page says she is 5'7". She is younger than I am. And she is athletic. I'm only 5'5" and disabled. So that would not have been --

In addition, I was qualified as an expert witness. And I testified that any version of what she said is physically impossible.

First, I had a paper in my hand. And she changed her story several times. But she said that I had struck her in the chest with an open hand. If I had done that, the paper would have fallen.

And then she said it was three times. What

did I do? Bend down, pick up the paper, and slap her again three times as she was standing there, slap her again in the chest? And then she said I spun her around. What is she, a toy top? And if it had been in the chest, it would have been in the center. When you want to spin something around, you go to one side or the other. And then she said spun her around three times. And I testified especially she claimed in the chest area. For it to be that forceful as to spin her or knock her back, or whatever she confabulated, it would have left a bruise. Because, Your Honor, the hand, you know, bone structure, with minimal padding; the chest area, the sternum, and she is a thin person, just the skin and subcutaneous fat. So any force would have broken the capillaries and would have caused bruising.

And Mr. Fernandez objected to my testifying as an expert, but the judge allowed it. So I testified that it was physically impossible for that to have happened because she admitted she had no bruises, no injury, no marks, no anything.

Now, at some point it is not a credibility issue when it is scientifically established as a physically impossible story. There was nothing

against what I said.

And the U.S. Supreme Court in the case of *Scott* v. *Harris*, they actually viewed the video. And they said it was proper to grant the pursuing officer qualified immunity, it was no longer a factual issue if the physical facts on the video showed that the man was speeding and the police had to put some spikes in his way. But he was speeding.

So it is possible to bring out physical facts that no reasonable fact finder would credit and to end it on that basis.

So it was physically impossible for any version -- her description is physically impossible for any of her versions to be true.

And the only thing that Mr. Fernandez relied on was her false claim of unwanted contact, which is a civil standard, not a criminal standard. And it is confusing the criminal standard.

THE COURT: Is there something else?

DR. FALTAS: Well, I think I'm done with this. But I beseech Your Honor to uphold the principle of structural error.

I don't think Your Honor needs to go through all of this. I think we should go back to the

first step.

Oh, there is another issue. I'm sorry. The speedy trial issue. And the speedy trial issue was raised and preserved by me also on the record. That was from September 11, 2009. I appeared in Municipal Court on October 2nd, 2009. I asked for a jury trial. It was set for jury trial on November 17th, 2009. That is transcribed.

Mr. Fernandez appeared and said, No, I'm not going to call it. And it was Hanna again. And he had not given me discovery. And she threatened to put me in contempt of court if I asked for the discovery.

And then again after -- I was arrested, as Your Honor knows, the next day after I appeared before you on December 2nd, 2009, had the General Sessions trial February 22nd to 25th, 2010. After that I asked for a speedy retrial and for a speedy trial for the allegations by Steele. And then I appeared before Municipal Judge, then-Municipal Judge Benjamin, and, again, there is a transcript. And I said I need my discovery. And I need for the City level charges to go forward.

And Fernandez said, I don't want to speak to her. I don't know what. And then he later tried

to pretend that that hearing never occurred. I confronted him with written notice of it and the transcript. And then we went through on September 23rd.

I appeared again in Municipal Court. Fernandez was there. I said the Municipal Court doesn't have enough judges who are not recused. Move the charges to Magistrate Court.

Then I filed a speedy trial motion again in May 2010. It came for a hearing before Hanna on October 6th, 2010. And Hanna said -- all she wanted to do was to pretend that I'm mentally ill and that I should not go -- I should be evicted. So she denied the speedy trial motion.

After that I actually wrote to the State Supreme Court and to the Office of Court Administration, and to several others. And I even filed federal habeas requesting my speedy trial.

So the issue of -- and then when Judge Barber kept appointing for me lawyers who were state employees and could not represent me, again in the transcript of January 16, 2013, I told Judge Barber of the speedy trial issue.

So we have a mere allegation from September 2009. That doesn't get tried until April 2013.

And I have invoked my speedy trial rights several times.

And the case of *United States* v. *Dugget*, I think, it says that one year delay is presumptively prejudicial. We have a four-year delay. And it wasn't due to anything I did. I kept asserting, my speedy trial.

One more point? In sentencing me, he didn't say in the finding, but in the sentencing he had said that I said that the police sat there for three hours and that doesn't sit right with him. That is Judge Solomon. And that is in the transcript. And that is also in the part that I quoted and highlighted in my motion.

THE COURT REPORTER: I'm sorry, I can't hear you.

DR. FALTAS: That is also in the part that I quoted and highlighted in my motion.

He said that the fact that I testified that the police sat there for three hours doesn't sit right with him.

But, in fact, if he had said that he was going to rely on that, I would have presented an incident report that showed that the police were there until even over three hours after that.

So it was the finder of fact pulling out of thin air something that he said made me not credible without giving me notice that he was going to rely on that.

He said, Dr. Faltas, the police were there for three hours, that just doesn't sit right. She is not accepting responsibility. But, in fact, the police either were there for three hours or came back and I had to estimate it all. It was a three-hour issue.

But the fact is that the finder of fact has no right to bring out or rely on facts not presented, or at least to -- he should have given me notice.

He said, Dr. Faltas -- he should have said, You testified that the police were there for three hours. I find that doubtful. Do you have any evidence?

And I would have said, Yes, Your Honor, here it is.

But he didn't do that. He just -- you know, it is taking facts not presented or making assumptions not reasonable based on the facts presented. There is nothing impossible about the police staying there three hours. So he should have given me notice of that.

And, Your Honor, all the transcripts that I mentioned are of record, of public record, in one place or another. But if Your Honor would allow me for the Court's convenience to email them or to burn them on a CD and give them of course a copy to Mr. Fernandez, but in the manner that is not burdensome on me because they are massive and I --

THE COURT: What transcript do you think that I need?

DR. FALTAS: All right. If it pleases the Court? The transcript of November 17, 2009.

THE COURT: Before? Who was that with?

DR. FALTAS: Municipal -- then-Municipal Judge Hanna.

THE COURT: Relating to the request that you made for a speedy trial?

DR. FALTAS: Yes, Your Honor. December -- I'm sorry, March 3rd, 2010, before then-Municipal Judge Benjamin; October 6th, 2010, before then-Municipal Judge Hanna. And of course I need the transcripts of the other hearing.

In addition, there is this huge transcript of the TRO hearing before the Lykesland magistrate on November 9, 2009. I have transcribed three-quarters of it by hand and filed it in this

court. And then before the General Sessions trial Heather Weiss went and got the tapes and had a separate court reporter transcribe it. But in it this is where my false accuser admitted that she came to my apartment and that she saw me with just the paper and she was scraping paint from the building. So she was armed. I only had the paper in my hand.

And, Your Honor, if I may end with a joke. It is said that the pen is mightier than the sword, but no one would ever say that a sheet of paper is an assault weapon.

THE COURT: Mr. Hernandez -- I'm sorry, Fernandez?

MR. FERNANDEZ: Thank you, Your Honor. Well, I'll begin with the right of self-representation.

Nowhere in the transcripts did the Defendant ever make a request to proceed *pro se*. I have reviewed both transcripts provided. And they are lengthy. And nowhere did she request to proceed *pro se*.

As Your Honor is probably aware, constitutional issues must still be preserved just like any other, and her lack of indicating to the Court that she wanted to proceed *pro se* did not

permit the Court to make a ruling on the subject. Therefore, nothing is preserved for appeal. She didn't preserve it in her grounds for appeal either on the property code violation case. On the simple assault they did put that in as a grounds for appeal, but it wasn't preserved in the record below.

THE COURT: Let me ask, Mr. Fernandez, Dr. Faltas has indicated that there were pretrial hearings that have not been transcribed?

MR. FERNANDEZ: I can't say, because there were many hearings. So it is certainly possible that it came up before. However, the argument --

DR. FALTAS: Actually, Your Honor --

THE COURT: Please let him talk. I will give you a chance for any rebuttal.

MR. FERNANDEZ: Your Honor, the argument as I recall -- and if Your Honor would prefer to have the hearing transcribed, that is fine with me too, so you will know what we are talking about. But frequently it was complaints by Ms. Faltas about her representation. She didn't like the attorneys. That is the ongoing struggle between her and her revolving door of attorneys that represented her over time. That is what I recall the primary

issues to be, is that she wanted new attorneys.

Now, I have seen some transcripts from -- there is an order -- there is a couple of orders in the record from Judge Manning denying her the ability to fire, I guess, denying the request to be relieved, and also one from I think Judge Barber. So if that would be incorporated, what I would then argue is you can't appeal a Circuit Court order to the Circuit Court. The appropriate avenue is to appeal that to the Court of Appeals. She has not done that. So I think it is not proper for this Court to hear that motion for those two reasons: One, it wasn't raised below; then, two, if it is the order -- the Municipal Court did not determine counsel, did not assign counsel, did not deny counsel being relieved. That was the Circuit Court arguing that. Two judges, it may have been more, I don't know. Maybe -- I think Judge Cooper might have also been involved in that process as well. I wasn't present for those hearings. But, in any event, if it was -- if the Defendant now argues that that is improper, she needs to have appealed those orders and not ignore them and then now claim for the first time that she didn't want to proceed *pro se* -- I mean, she wanted to proceed *pro se*.

As far as all the other grounds, Your Honor, the only matters that were preserved on the record and in her ground for appeal relating to the ordinances was *Beachfront Entertainment* v. *Town of Sullivan's Island*. I didn't hear her argue that case.

DR. FALTAS: Your Honor, that case --

THE COURT: Dr. Faltas, please allow him to finish his argument.

DR. FALTAS: Okay.

THE COURT: Without interrupting. And then I will give you a chance to respond.

MR. FERNANDEZ: I didn't hear her argue that case in particular. That was the only ground that was raised from that trial, the ordinance -- the code violations. That is the only ground. That has to do with the preemption argument, Your Honor.

And the appropriate standard for that was the one that was applied to the City. The state law gives power to municipalities to adopt nationally recognized codes and standards, Section 6-9-60. I do have a copy for Your Honor, if you would like it. It delegates the power to municipalities to adopt code violation cases, specifically for -- it references property maintenance.

The statute does specifically also say that it needs to be made available by the International Code Council. That is the entity that publishes the International Property Code Maintenance, which is exactly the same code violations that the City incorporated.

THE COURT: And that is as to the ordinance in Case Number 3525?

MR. FERNANDEZ: Correct. No, I'm sorry, 3522. 22 is the code violation.

DR. FALTAS: No.

THE COURT: No, 25 is the code violation.

MR. FERNANDEZ: Oh, I'm sorry. Okay. That is only relating to that, Your Honor, yes, Your Honor.

The City adopted under the authority granted to it by the state legislature to state the exact property code maintenance articles that were prescribed by the state. There is nothing preempted here. The State has given us the power to do that. And so the preemption argument didn't apply. So it is pretty clearly on point. And that was the only ground that was raised on their appeal.

THE COURT: In 3525?

MR. FERNANDEZ: In 3525, yes, Your Honor. So

as far as that trial was concerned, the only ground raised is inapplicable.

Moving to the -- we heard a lot more about the simple assault case. Your Honor, I would then argue, if you will look at the grounds for appeal there, the only appeal grounds are that the City -- I'm sorry, that the judge did not direct a verdict of not guilty. Then the denial of the right to represent herself. And then any other grounds that appear in the transcript, although that is not sufficient grounds for an appeal. The general catchall, any other grounds which have been held not to be sufficient, it needs to be specific as required by the statute for appeal.

So if we are going to take the one that says directed verdict of not guilty, it should have been proven. That is the injury aspect that we heard the Defendant argue. And in that respect, she proceeded under the charge for simple assault. It does require an assault and battery. Two witnesses testified that there was an assault and battery. There was an offer and contact. The offer was the aggressive nature of the Defendant. She was approaching Ms. Steele. Ms. Steele tried to leave. She pursued -- the Defendant pursued, and

ultimately three strikes to the chest and spun her around.

The Charlene Crouch, I corroborate all of that. She witnessed it. The judge, when he ruled guilty, he said that he reviewed all applicable case law on the matter and was content that he was -- he was content with his understanding of the assault law of South Carolina. So there was a knowledge there, that he acknowledged that he had done his own research, in addition to whatever was argued by both counsel, and came to the conclusion that she in fact did strike the victim.

I can address all the other matters, but they were not raised either in the grounds for appeal or on the record below. So if Your Honor would like me to go through them, I can, very briefly. I leave it up to the Court.

THE COURT: Yes, sir, you might as well address them.

MR. FERNANDEZ: Okay, thank you.

THE COURT: So we don't have to discuss it again.

MR. FERNANDEZ: The recusal motion -- what Ms. Faltas has done, I think she moved to recuse every judge she has come in front of down there.

So that created a scheduling -- and sometimes judges did recuse themselves, sometimes they didn't. They created a scheduling issue, because there is only a certain amount of judges down there, and they all are part-time judges, they are not full-time. So it creates a -- dealing with their private practices and getting them into court on certain days when we have juries available, it creates a scheduling issue. So time needs to be built in for that.

But as to Judge Solomon's recusal, I don't know if she did ask that he recuse himself. I can't speak to that. Obviously he denied it if she did. However, she obviously was not that aggrieved because she did ask for a bench trial. And she didn't do it under duress because, in fact, the only -- the transcript, really all it says from her is that, I don't want a jury trial. So she doesn't say any reason why, because it is simply a strategic decision on her part at that point. And it was likely based on what -- she made a determination based on what she was going to be able to talk about because she wasn't going to be able to kitchen-sink the trial and just talk about everything that she thought applied, she made a

conscious decision to go forward with a bench trial. And it did provide her greater latitude, as the judge acknowledged, because the judge was able to sit through and hear all of it.

The point being, none of it was made under duress. There was no indication of that at all, and certainly no objection from counsel or the Defendants at that point. So that just does not appear to be true.

The assault, as far as it being an assault, the victim and the witness both testified that there was a physical striking -- pushing, striking, however they characterized it, that it was certainly an assault. I heard the argument about it being physically impossible, but certainly it is possible to strike someone and not burst the capillaries.

The jury trial waiver. We talked about the bench trial.

The improper jury. Well, she waived all those issues about there being an improper jury or her request for her demand for a jury trial. She waives those when she doesn't proceed with one. You can't just say, I want -- the jury pool was improper. But she didn't go forward with a jury

trial, so she waived that argument. She chose to go forward with a bench trial. No one pursued her. In fact, she demanded it. I was the one that had to react to that, because I was expecting a jury trial.

So she waived the argument about anything that occurred regarding the jury because she didn't pursue the jury trial.

Charlene Crouch, I provided a NCIC rap sheet to counsel and myself, and I think the judge had a copy too. That is what we relied on for prior convictions. It is what it is. It is a rap sheet. Whatever is on there is what is reported I guess to SLED. And if it is not on there, then I have no idea what it is. And certainly they could have asked Ms. Crouch if she was intoxicated at the time, if she pled guilty to -- Lord knows, they went well beyond the general record, so I don't know -- they obviously made a strategic decision not to ask those questions, but there was certainly -- the confrontation clause was satisfied. Ms. Crouch was on the stand to answer any questions they asked her. They just declined to ask her those kind of questions.

So as far as - I know -- you are probably used

to it by now -- but all those accusations about misconduct. The point is we provided all the documentation we had. And at no point did the Defendant at all raise the issue of this prior drunkenness conviction. If it was such a central tenet to her defense, certainly they should have asked the question on the stand if she was drunk or not. And they did not do that.

And I think there was at one point where there was something brought up about the molestation case. I do recall -- and I don't know if the record reflects this or not. I'm sure it wasn't, because I was talking to her privately. But I do recall asking Ms. Crouch about that. And she indicated I think to the Court too that she didn't know anything about that. So I don't know what happened there. I still don't. I hear what the Defendant says. I don't know what happened there. And I just don't -- I think Your Honor has already ruled.

About my saying that they were friends, her and Charlene Crouch, well, that is because the Defendant testified that she would talk with Ms. Crouch and share stories about the apartment complex and about some fruit baskets or something.

I mean, they were sharing stories. So I don't think that is a stretch to say that -- I didn't say they were friends, I just said that they were on speaking terms. And they were. And that goes to the credibility of Ms. Crouch, that it wasn't a bitter hostility apparently between them because they both felt comfortable enough talking to each other at certain points during their stay at the apartment complex. So I don't believe that is at all misleading. It is just the record.

If the judge chooses not to believe the testimony of the Defendant, there is no obligation that the judge ask the Defendant to somehow clarify or recant. The Defendant had an opportunity to testify. And if the judge didn't believe what she was saying, which he clearly did not, that is her problem. And she had an opportunity to testify. The judge doesn't owe her any kind of chance to change her testimony or amend her testimony. She chose to say what she chose to say. He found it very unbelievable. And that is just how the trial went. There is no obligation on the Court to somehow give the Defendant an ability to rehabilitate themselves.

The speedy trial. That kind of goes to the

other part. There had been numerous requests for speedy trial. We actually tried to try multiple cases before where the Defendant comes up with an illness or mid-trial has an illness where she has to be taken to the hospital. That is not uncommon.

Also, on the speedy trial motion, she will either move for the judge to recuse themselves, and I guess sometimes it has worked, obviously required a continuance. Other times she has an injury or the illness thing. Then other times she has demanded that an attorney be appointed, but I find it ironic that sometimes she says she wants to go ahead *pro se*, other times she is demanding that she be appointed a public attorney.

It is all just a shell game, in my experience, that it is either -- it is one thing or the other, but you can't speak out of both sides of your mouth.

On this particular case, like I said, she did not demand to proceed *pro se*. And I think that goes to a speedy trial credibility. Obviously the other judges knew or have heard the speedy trial motion. They found that the contributing factor for why the cases were not tried was due to the Defendant herself, not because of any reluctance on

the City's part.

And if Your Honor wants those transcripts, I'm sure the Court can dig them up, but they will reflect that, that it was simply because of the Defendant's own actions and behavior, not because the City in any way was not able to go forward. We were able to go forward for quite some time.

I think I addressed -- unless Your Honor has any remaining concerns, I think I addressed all the issues raised by the Defendant.

THE COURT: Thank you.

MR. FERNANDEZ: Thank you.

THE COURT: Any response, Dr. Faltas?

DR. FALTAS: Yes, Your Honor. Two housekeeping matters first. I think Your Honor clearly directed me to first argue the assault case; and after he had responded and I had replied, we were going to go to the property case. But he went ahead and argued the property case, which I had not -- did I misunderstand Your Honor?

THE COURT: No, ma'am. We started off with that. And I understand that there is some issues that may overlap into the property case, but if you will just skip over the argument so far about the property case, then we'll come -- and actually we

will take a lunch break before we get to the property case.

DR. FALTAS: All right, thank you. And the other housekeeping matter, Your Honor, is that there had been an extreme, extreme financial hardship on me. And part of that is the delay of the appeal and also the fact that I had to pay an exorbitant appeal bond. And the appeal bond is just for showing up. It is a bond for me to appear at the next hearing of the Circuit Court, which I did last time when it was scheduled before Judge Barber.

So even if that doesn't count for appeal and that bond is not contingent on the result of the appeal, so I would like Your Honor, since I appeared and defended, I would like Your Honor to order them to refund the bond because it has fulfilled its purpose. And I would like Your Honor, if it please the Court, to order immediately that -- and, God forbid, should Your Honor rule adversely to me, it would be up to Your Honor to set a new appeal bond for me to appeal further, but in that case I will tell Your Honor, as I have told Your Honor before, when I was facing six years plus enhancement under the false harassment charges. I

did not escape. I stayed. I defended myself *pro se*. And, thank God, I prevailed.

So also I have a much higher vested interest in getting the false convictions reversed, my professional license, and my ability to convert my lawful immigrant status to citizenship.

So Your Honor I think would be completely satisfied, so I would like as a housekeeping matter for you to order them to refund my appeal bond, because, you know, my sisters have sold everything they can sell to keep me -- to keep a roof above my head for all my past four years.

THE COURT: All right, Dr. Faltas, I'll consider that matter. But any response?

DR. FALTAS: Oh, absolutely. Absolutely. Absolutely. Absolutely. Absolutely. First of all, the word duress is in the transcript. And I can show Your Honor the line and page if you would hand me the transcript.

THE COURT: I intend to read the transcript, so I'll look for it.

DR. FALTAS: And I have also, because all upper case transcript is tedious, I had scanned it then converted the upper case to lower, so I have it much nicer. It is the same -- which I can email

Your Honor. But, in any event --

THE COURT: I have to use the official transcript that has been provided to me, and that is the one that I will use.

DR. FALTAS: And so Your Honor is absolutely correct that at the pretrial hearing I absolutely said I do not want counsel at all, I want to appear *pro se*.

And Judge Solomon said, no, based on the State Supreme Court order, I will not let you appear *pro se*. So that is in the the non-transcribed, which I have asked several times to be transcribed.

In addition, there is a transcript that Judge Manning has given an order for it, and that is the February 21st transcript before Judge Barber. And that was to relieve Mr. Lupton. And Judge Barber asked me, What do you want? Do you want to represent yourself? And I said, Absolutely, as I have an absolute right to do.

And how about we do this, Your Honor? Is it possible for the clerk to make a copy for you?

THE COURT: I'll take a copy.

(Mr. Shaffer hands the Court a copy.)

DR. FALTAS: So it will appear that I had requested and preserved the right to

self-representation many, many, many times.

Now, he says about a speedy trial. Remember, it is back to November 17. So I wasn't -- at that time I wasn't -- in fact, I was pleasant to Judge Hanna and I told her that I liked her. And at that time I did not know what a bad judge she was.

And so she said: "Okay, because the prosecution was not ready." They were proceeding under the now-invalidated idea that the prosecutor in Richland called the case. And Your Honor knows from the case of *State* v. *Langford* --

THE COURT REPORTER: I'm sorry, I can't hear you.

THE COURT: Let's -- Dr. Faltas, I understand that those all relate to speedy trial motions, so you've indicated that you made those motions and he provided what he says are reasons why they did not go forward in the manner and expedience as you would have liked, and a portion of that had to do with recusal of judges and scheduling.

DR. FALTAS: No. But no. But no. No. No. That is not true. There was no recusal issue in November, 2009. There was no recusal. There may have been a recusal issue in March 2010, but they insisted, No, we are not biased. We will try it.

Except that they refused to schedule them. And I made the motion again. And in October 2010, Hanna said, I'm denying the motion for speedy trial just because. She didn't even give any reason. Apparently, if she gave a reason at all, her reason for denying the motion for speedy trial was that I had made the motion for speedy trial. Somehow making the motion for a speedy trial is itself a reason to deny the motion. This is totally incongruent. And I have no idea --

THE COURT: Let's get to the substantive issues, Dr. Faltas, in terms of the argument about the evidence and the testimony. I think your issue about the speedy trial, we have discussed that. And I understand that you disagreed with that. And it will take me a while to go through all of this and figure out what I need and what I don't need.

DR. FALTAS: And, Your Honor, again, I also have where I wrote to the Office of Court Administration. And that was 2011. And they wrote me back saying that it will be scheduled soon, and they weren't scheduled soon.

In fact, as late as 2013, they first said we'll schedule them, then they said, "No, we won't schedule them." And it took the involvement of the

Chief Justice who issued her March 7th order saying Judge Solomon has to immediately do a pretrial and give me -- and report every 30 days. Only then did they schedule them.

In my opinion, the Chief Justice's 7 March 2013 order was after -- after the fact of my having to file federal habeas corpus requesting speedy trial. So that totally, totally factually is not correct.

Now, again, yes, there is a lot that Lupton did not do. And that is why I say that it is ineffective assistance.

And then Mr. Shaffer handed me the South Carolina Court of Appeals case of *State* v. *Johnson*. And it says -- 510 S.E.2d 423. And that is from 1999.

And the part he underlined said: The State nevertheless contends that the Defendant's proper remedy is through the Post-Conviction Relief Act.

If the Court unyieldingly insisted that PCR is the only avenue of relief in this case, there is the real threat that the Defendant may remain incarcerated beyond the legal sentence due to the additional time it will take to pursue such remedy.

So sometimes ineffective assistance of counsel

can be raised on direct appeal when it appears from the record. And here I think he should have more vigorously examined Charlene Crouch. In fact, during the sentencing, I speak out and tell the judge, I even asked Mr. Lupton to ask Ms. Steele, who is the doctor she went to? What medication did she prescribe? She needed to name them.

I had asked the counsel who was forced on me to do that examination. And he didn't. And even during the sentencing he said, Yes, I didn't do that examination. I am not going to bring the paper that she had -- had filled the paper as my false accuser of harassment, which asked her whether she needed medical attention or has sought medical attention. She had said, No, no.

So here -- so that appears on the record. The ineffectiveness appears on the record. And on direct appeal -- of course, I am not incarcerated, but I have a 20-day sentence which can harm me. I have also been four years having this stress and prevented from --

THE COURT: Let's get back to the specific issues.

DR. FALTAS: I'm sorry. So the only thing that Mr. Fernandez is correct about is Mr. Lupton

didn't do vigorous cross-examination; but that is, you know, part of his ineffectiveness, and there was no way -- in fact, in the other hearings where I have -- and in that other trial, which the jury returned not guilty verdict, in the middle, Judge Solomon asked me, Did you give this information to Mr. Lupton? I said, Yes. I figuratively kissed his feet for him to read it, but he wouldn't. So I was tolerant about that.

Now, to Mr. Fernandez's claims that Charlene Crouch and I were on speaking terms, well, of course at one time we were on speaking terms. This story about the fruit basket happened in December 2008, eight, 2008. And Your Honor may remember from one other -- of course you are allowed to take judicial notice -- of the evidentiary hearing that was heard before Your Honor on December 1st, 2009. All this misery was done to me because mother and I bought that adjacent land on March 3rd, 2009.

And then Charlene Crouch started shining mirrors through my window so I couldn't sleep. And I sued her in August -- I'm sorry, in September, 2009.

So for him, for Mr. Fernandez, to stand and

say, Oh, they were on friendly terms, in April 2013 or even in December of 2009 is total prosecutorial misconduct.

And, yes, Mr. Lupton did not object, but he didn't object because he was ineffective. And if I had objected I would have been held in contempt of court. Not only would have, I had been held in contempt of court in the property trial, which was on April 11, 2013. So that was an issue.

Now, if they don't transcribe the pretrial hearing, which actually the Chief Justice has ordered -- not ordered the transcript, but ordered that there be a pretrial hearing. And in it I did very specifically raise that I want to represent myself. So even if they don't transcribe it, I can make Your Honor a link, because that is the only way that it can be done.

Oh, I'm sorry, I did file the audio that I can submit at which particular minute at which hearing I did raise my right to proceed *pro se*.

So what was the other factual issue?

THE COURT: I think that was it.

DR. FALTAS: Okay. So, yes, I talked to Charlene Crouch in 2008. I sued her in 2009. And in 2011 a man testified in court that she is a

prostitute. And so in 2013 Mr. Fernandez had absolutely no ground to say that she had --

THE COURT REPORTER: I'm sorry, you need to speak up.

DR. FALTAS: Mr. Fernandez had absolutely no ground in April 2013 to say that Charlene Crouch and I were on friendly terms at that time or that we were exchanging stories. In fact, I did not speak to her at all, lest I be accused of --

THE COURT: Are you saying that you accused her of being a prostitute?

DR. FALTAS: No, ma'am. A man testified that she was a prostitute and that he was giving her money for sex. And actually --

THE COURT: I guess I'm failing to understand how that shows that you and her did not have problems, that you and Crouch had problems?

DR. FALTAS: He testified during the small claims lawsuit I had brought against Crouch for having gotten into the habit of shining a mirror through my window at night so I do not sleep. And she started doing that in August and September, 2009. It did not go to trial until March 2011. And so there was this testimony.

And, in fact, in my public record search that

I did, that very same man had tried to get a restraining order against Charlene Crouch. And in it he said that she was a prostitute who was banging on his window and requesting money for drugs. And then she had the grand larceny conviction. And he testified in the March 2011 hearing that he paid her bond and her restitution in return for the sexual favors.

So this is very important factual testimony that Charlene Crouch had a huge dog in the fight in that Charles White, who was a tenant of Dinah Steele, and Dinah Steele has a No Trespassing order against Charlene Crouch going to 300/304 Byron Road, but she was waiving it and protecting it so that Charlene Crouch could continue to prostitute herself with Charles White and get money from him all in return for Charlene Crouch falsely testifying against me.

THE COURT: And did Mr. Lupton bring out any of those matters during her testimony?

DR. FALTAS: He did not bring them, but I had asked him. In addition, we know from the actual record that I gave him, the actual recording and the actual complaints by White against Crouch. And it is on the CD that Lupton burned and filed a copy

with the Municipal Court and served a copy on Fernandez.

And I also asked about it in the hearing that Your Honor got a copy of. And Lupton said that he did file reciprocal discovery and served it on Fernandez.

So this is, you know, ironclad. That material was provided to me, it was provided to the prosecution. For the prosecution to stand up, knowing that the false accuser was a drunken prostitute, and whom I had sued, for him to stand up and say because I had once talked to her in 2008 that she has no dog in the fight is prosecutorial misconduct. And I stand by this.

THE COURT: All right. Anything else, Dr. Faltas? We are going to take a lunch break. And I'm trying to finish this case, because when we come back the only thing we are going to talk about is the other one. So is there anything else on this case?

DR. FALTAS: I don't think so, Your Honor. And -- but Your Honor did not give me clear direction on Number 1, getting the exhibits.

Oh, yes, one other thing, if I may. One of the exhibits that were introduced was Dinah

Steele's habit of whenever -- in fact, there was a photograph that was introduced into evidence of Dinah Steele and Mason and some third person standing at the mailbox and doing this movement, Go away, go away, go away, when I was going to get my mailbox. So what had happened -- and I testified that what she was saying, Go away, go away. And I was trying to give her the one sheet of paper. I put it on her arm when she was doing this. So evidently it fell. But I touched her. So -- but before it fell, you know, she instinctively touched her own chest, and that is when they falsely accused me.

THE COURT: All right.

DR. FALTAS: All of them. So the fact -- and, again, the structural error of my not being allowed to represent myself, that is not stuff that would have done by Dr. Faltas. Had I been representing myself I would have insisted on discovery and I would have done a better cross-examination of everybody in this courtroom like I did when I was falsely accused of harassment.

So -- and then the exhibits I have early on asked Mr. Shaffer to get them from Municipal Court. He didn't. I cannot -- my ineffective counsel

cannot be imputed to me.

THE COURT: So we are going to take a lunch break.

Dr. Faltas, do you have the same or similar issues on the property case?

DR. FALTAS: I will keep all of them. There is a jury tainting issue. There is a jury tainting issue and the federal constitution issue of non-sovereign. Those are going to be my main arguments.

THE COURT: And the second argument is a similar one to the one you made with respect to the assault charges; is that correct? That the municipality is not a sovereign and it doesn't have the authority or the right to be able to enact special statutes or its own statutes?

DR. FALTAS: Yes. But also as far as health and safety, I will go a little bit into that. And -- I'm sorry. Thank you very much, Your Honor.

The very important issue, which is peculiar to the argument is the *Florida* v. *Jardines* argument, a US Supreme Court decision, which was part of the transcript. During that trial, I put it in the trial transcript.

THE COURT: Well, we are going to take a lunch

break. And we are going to come back at 2:30. And I'll hear the arguments as it relates to that particular case. And you have kind of briefly outlined them, and so I'll be prepared to hear that information.

DR. FALTAS: Thank you very much, Your Honor.

THE COURT: We are down until 2:30.

DR. FALTAS: Thank you.

MR. SHAFFER: Do I need to be back?

THE COURT: I don't particularly need you. I don't know if Dr. Faltas needs you or not.

(WHEREUPON, a lunch break was taken at 1:33 p.m.)

(WHEREUPON, the proceedings resumed at 2:39 p.m.)

THE COURT: We're going to pick up the 3525 case, 13-3525, and talk about the grounds for the appeal in that one.

And you were limited to a couple of arguments before we took a lunch break, and so let's pick up there, Dr. Faltas.

DR. FALTAS: Thank you very much, Your Honor. And, please, before I do, just a couple of housekeeping matters, if I may?

I did ask for Mr. Shaffer to be relieved. And

I had also asked to have standby counsel, if for no other reason than the fact that, you know, I'm suffering from physical health issues, and at any time I might become physically unable to pursue my rights. So I was hoping Your Honor would give consideration to appointing standby counsel for me. That was done before. And the understanding is that the standby counsel would step in only if there is a physical issue.

THE COURT: And Mr. Shaffer is still here, so I took it that you wanted him to continue on and stay here.

DR. FALTAS: Well, actually, I asked him to stay for another reason, but if Your Honor wants to appoint him as standby counsel and if he is willing, I'm not going to say no. I had other ideas, but whatever Your Honor decides.

THE COURT: Well, I'm hoping that you will be able to get through the rest of it. So let's see how that goes. And if something were to happen with him sitting here, then we may impress upon --

DR. FALTAS: Yes. I think if, God forbid, Your Honor were to rule against me, then there is the next appeal, and if I were physically disabled in between. That is why I would need standby

counsel.

The other housekeeping matter is that I did file a copy of the CD in one of the cases that does have the different hearings in which I had asserted my right to self-representation. I'd be more than happy to give Your Honor another copy and Mr. Fernandez another copy, so that in case they do not do the transcript quickly enough. But we have -- it is their official recording, not mine.

THE COURT: And you indicated that there were transcripts, I mean, that there were other recordings? I think you provided a tape or something?

DR. FALTAS: Yes. Yes. Yes, Your Honor. But these are the ones from the recent hearings in Municipal Court. There is one which is missing, which I had been also asking for. I don't even have the audio of that. And that is the July 25, 2013, trial of *The State* v. *Teresa Ingram*, where I was the victim, the proven victim now. And during that hearing -- I alluded earlier -- I presented Judge Solomon with what I filed in Federal Court about the perjury and all the issues that I had.

You asked me if I had raised them in the lower court. And my answer was, Yes, I did, on

July 25th, 2013, by providing Judge Solomon with a copy of my federal pleadings -- of my federal submissions, which contained all of those facts. But -- but -- if a transcript is necessary, I would like Your Honor to issue a writ of mandamus for the Municipal Court to provide those transcripts. And I think Mr. Shaffer has already presented where he had emailed the Chief Administrator of the Municipal Court for the transcript of those hearings.

MR. SHAFFER: I did, Your Honor. It was in July. Whenever I was representing her, I did email her and asked for the exhibits and recordings.

She -- Judge Turner had said that she would -- she needed the specifics of the case. So I provided her with the specifics of the case. She then called me. And I honestly do not recall the phone call right now. Or she had asked me to call her, I believe. She gave me her cell phone number and asked me to call her. And I don't recall the exact substance of that conversation, but it had something to do with her providing it.

Your Honor, I did not file mandamus, obviously. I did email her this morning about it as well -- or last night -- asking about it. It

might have been this morning. But --

THE COURT: The only thing --

MR. SHAFFER: -- I haven't had a response, Your Honor.

THE COURT: The only thing I received from you, Mr. Tristan, was related to the hearing before Judge Barber.

MR. SHAFFER: Yes, Your Honor.

THE COURT: But I didn't receive any additional information.

MR. SHAFFER: Yes, Your Honor. This would have been transcripts that have not been produced, my understanding is. I had requested transcripts for the pretrial hearings: March -- the morning of March 12th, 2013; April 10th, 2013; and April 24th, 2013. Apparently there were pretrial hearings in this. After looking at it, I thought -- the arguments that I had intended on raising I thought were sufficiently preserved by the introduction of that transcript, which I believe was actually -- I believe there should be a copy of that transcript in the Clerk's Office, the one from Judge Barber, the one that I provided you, Your Honor.

THE COURT: Yes, sir.

MR. SHAFFER: I believe that there is a copy.

I know that the Court has a file that -- prior to her appeal coming up here, the Clerk's Office here had like a miscellaneous type file for things coming from Circuit Court jurisdiction that had concurrent jurisdiction over those. Like all the paperwork the clerks produced by Judge Barber all came through -- and they had a file in the Clerk's Office, I believe. So I believe that that transcript might have been in there.

THE COURT: Well, it appears that audio recordings were presented and covered some of those pretrial hearings.

MR. SHAFFER: Okay.

THE COURT: There is March 12th, 2013; March 21st; April the 8th of 2013; April the 10th; April 11th. And those appear to be all CDs that Dr. Faltas attached to some filings. So that is the same documents?

DR. FALTAS: Yes, Your Honor. So -- but if in case they need to be transcribed for Your Honor to be satisfied that there is no merit to Mr. Fernandez's claim that I did not preserve those arguments, then I ask for Your Honor to issue a mandamus to the Municipal Court for them to transcribe it, and to also return the exhibits,

both the proffered exhibits and the admitted exhibits.

And I would like to say that the issue of a transcript being complete and error-free, the U.S. Supreme Court has also spoken on that. It was *Chessman* v. *Teets*, and I think it is from 1955.

THE COURT: All right. Now I'll hear your arguments on your case, please.

DR. FALTAS: Yes, Your Honor. On the property issue, on the property maintenance case, there are several issues I did list. There was one that I wanted to add, which is the South Carolina Department of Health and Environmental Control defines "rubbish" very differently from the City. So the state definition preempts any City definition. But this is a subsidiary issue.

I would repeat the sovereignty issue Your Honor heard before, but specifically when they claim to be legislating in things that affect health and safety, these matters require expertise just for the same reason that in federal and also in state cases there is deference to the agency that is charged with implementing the statute or scheme of laws because that agency has the technical expertise.

So the agency that has the technical expertise in safety issues in South Carolina is DHEC. And although this is not directly a Steele and Mason charge -- that is the only charge, Steele and Mason -- formal charge, but the fact of the matter is they were the ones who instigated that, and that was by the testimony of the City's own agent.

So initially they called DHEC and claimed that I had infectious material there. And DHEC came immediately and did an unfettered inspection. And they said there was nothing wrong there.

And I had tried to subpoena the DHEC person, but, again, because of ineffective assistance of counsel, it wasn't done in a timely manner. But I proffered the DHEC determination, and I had asked that it be introduced under the theory that public records are self-authenticating.

So they claim that I had wood there. Oh, there is one other issue, which was the misinterpretation of the selective prosecution.

Let's go back to *Florida* v. *Jardines*, because this is a very important U.S. Supreme Court case that few have understood the implication of it just because it is recent.

And the Curtilage -- C-U-R-T-I-L-A-G-E --

Doctrine is rather old, but in *Florida* v. *Jardines*, the U.S. Supreme Court, built on previous *United States* v. *Jones* trespass issue, which they said that the government cannot have -- the government cannot put a recording device on somebody's car without their knowledge, because that is trespass on his car.

So in *Florida* v. *Jardines*, they built on *Jones* v. *United States* and said that the government agents cannot go to the front yard of somebody's home and collect evidence of a crime. And they cannot trespass. They cannot go to any area where they are not invited by the owner and collect evidence of a crime.

Of course, I contend that I committed no crime whatsoever. But it was established that the land had No Trespass on all four corners, that the City agent went in without my permission or invitation and took pictures from close range to create an optical illusion of things being haphazard.

So that should be reversed under *Florida* v. *Jardines*.

The other thing is that the ordinance claims to criminalize the possession of scrap metal. But even their agent testified that there is no

definition of scrap metal. And he had to look it up on Wikipedia. So the ordinance is way void for vagueness.

And *Florida* v. *Jardines*, *Jones* v. *United States*, and before that, *Lucas* v. *South Carolina Coastal Council*, which was a case that the U.S. Supreme Court reversed the State Supreme Court on, that when you own land, even land, you acquire a bundle of rights that the government may not intrude upon.

So if I choose to keep rusted metal on my land, the government has absolutely no right to criminalize that.

In addition, the state agency that has expertise said there is no safety issue. For heaven's sake, even the City's stop signs are rusty. This is totally oppressive and unreasonable.

In addition, they have specious claims for pretending that -- they said, We don't want water to collect. And, Your Honor, and given there are pictures, but of course we need the exhibits transported, because part of the harassment of me was that neighbor was bringing their dogs to pollute the lot that mother and I own. And also

the next -- the further down on the other side, he wasn't cutting his grass regularly. And that even appeared in the City's pictures. And the weeds would blow to my land. So I placed a series of identical in color inverted buckets along the border to mark the border and also to act as a natural barrier that would not, you know -- so there is absolutely nothing wrong with that. And this is not just my opinion, it is the opinion of the DHEC inspector who has the expertise.

So they claim, Well, things can hold water and that can give rise to mosquitoes. Just next-door in the parking lot of Dinah Steele, who has Larry Mason to consult, there are potholes and there are big areas of stagnant water.

So selective prosecution is a relevant issue that was totally not allowed to be heard fairly below. Because they said, Well, you cannot tell a prosecutor, a prosecutor has absolute discretion. No, no, no. *United States* v. *McDonald* said that the prosecutor does not have absolute discretion. They do not have absolute discretion. They cannot exercise a prosecutorial decision based on discriminatory or vindictive reasons.

And I would say in my case there were both

discriminatory and vindictive reasons.

And then they say mosquitoes. Well, mosquitoes can gather or lay eggs in the water collecting in the potholes. And they can lay eggs in the stream. The state bird -- a joke is the state bird of Minnesota is the mosquito. So there is no possibility of eradicating mosquitoes by eradicating water. That just doesn't happen. Even the trash can that the City has will collect water when it is raining. So this is just totally unreasonable.

And that is why I'm saying this is one more example that small non-sovereign without expertise and without checks and balances should not be allowed to legislate and should not be allowed to criminalize conduct or prosecute crime because it is ripe for abuse.

The other thing is about scrap metal. Again, one man's trash is another man's treasure. Not only are most of the stop signs in the city rusted, they have this huge thing on Taylor Street, a pipe or something that is made of scrap metal. In front of the Washington Square building, which is the City of Columbia's office building, there is Rita, the meter maid, which is a statue made out of scrap

metal.

So, you know, people have the right to keep what they want at their own homes or on their own land so long as it is not per se criminal. I mean, I'm not saying I have the right to keep, God forbid, marijuana or drugs or anything. But none of those things -- metal, wood, inverted containers that do not hold water -- that is totally within the property rights, totally immune from government regulation.

The additional issue in this particular case was the tainting of the jury pool, because during jury selection on April 8th, Columbia Municipal Judge Bogan, who is formally recused, still presided over the jury qualification. And then I needed to have a list of the jury. And he said, Okay, let's give her a copy of the jury list. And then a Columbia police officer by the name of Officer Hampe came and whispered something in Mr. Bogan's ear, and then Mr. Bogan said out loud, within the hearing of the entire jury panel, We will not give you the jury list because you were held in contempt for not returning the jury list before, and we don't want you bothering the jurors.

And so when I appeared before Judge Solomon I

explained to him that that was false. I was never held in contempt of court. That, in fact, after Mr. Bogan in another case had said that I should return the jury list, and Fernandez tried to hold me in contempt for not having done that, Mr. Bogan said that he looked and realized that I have the right to keep the jury list, and therefore he will not hold me in contempt.

Yet, the same -- the same J. Steedley Bogan -- in the presence of the jury venire said, You were incarcerated for contempt for not returning the jury list and we don't want to give you the jury list this time because we don't want you bothering the jury.

That is as prejudicial as anything can be. And I brought it up. But, again, that time it was Mr. Briggs, not Mr. Lupton, who was the forced counsel on me, and he suggested that to do a curative instruction. And I said, No, a curative instruction would only highlight the prejudicial comments that the jury heard. But of course I was not allowed to make decisions for myself.

In addition to that, because the City of Columbia's Municipal Court doesn't give jurors badges or buttons or anything, no one knows a juror

from a non-juror.

And in a previous appearance -- because this one is also subject to the speedy trial issue -- Steele and Mason brought one of their -- sorry -- partners in crime, and I say that advisedly because I have proven that they had a prostitute tenant and a drug dealing tenant and a drug dealing family. And there is an issue of Larry Mason having either murdered his second wife or having murdered --

THE COURT: Dr. Faltas, let's move on.

DR. FALTAS: All right. They brought a man, who is their associate, who was mingling with the jurors. And at that time it was Judge Jenkins. And I brought it to his attention. And later Judge Jenkins recused himself because of Steele and Mason, not recuse myself -- himself from my case, he recused himself from cases involving Larry Mason, Dinah Steele, and I think Alden Wheeler, which is the man they brought to mingle with the jurors that day.

THE COURT: So what you are saying, Dr. Faltas, is that on the day of jury selection that there were witnesses who were -- and parties intertwined with the jurors?

DR. FALTAS: On the day of --

THE COURT: Of selection?

DR. FALTAS: On the selection. There were prejudicial comments that were made. But in another case there was a witness who was mingling with the jurors.

THE COURT: Well, I have to refer to what is going on in this particular case.

DR. FALTAS: In this particular case Dinah Steele went and mingled with the jurors. And I brought it to the judge's attention on the record. And, once again, he said for her not to -- for her to stop doing that. But the harm was already done.

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.

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?

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.

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.

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, but no one has brought them up. And, again, Your Honor, I have been immersed for the past four years in all these criminal matters and criminal laws and peculiarities of South Carolina than I ever imagined in my life. But some ideas

evolved and there is no reason someone of your unique integrity and brilliance should not rule on them. They are issues of first impression. And, of course, they did prejudice me in that I was not allowed to have the last word because I presented a defense.

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.

And there were issues of the exclusion of evidence, especially the exclusion of evidence on selective prosecution.

And there was also an issue of the judge refusing to qualify me as an expert witness. I am an M.D. and I hold a Master's of Public Health in Epidemiology and Biostatistics. And the City's claim was that what I had was hazardous, or something. So I was perfectly qualified to testify that it wasn't.

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?

This is a private vacant lot of land with four corners, and 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.

THE COURT: All right.

DR. FALTAS: Thank you.

THE COURT: Mr. Fernandez?

MR. FERNANDEZ: Yes, Your Honor. The only thing preserved in this case was the argument of *Beachfront Entertainment* v. *Town of Sullivan's Island*. I addressed that earlier. I will just reiterate it just so the record is clear.

Section 6-9-60 gives municipalities the authority to enact regulations and code and property and fire code maintenance regulations. It provides what we can and cannot do.

The City adopted the International Property Maintenance Code published by the International Code Council, which was what the legislature preferred in the City Ordinance 5-151. And we

simply enforced the code as instructed by the International Property Maintenance Code and the state legislature. There is no -- that is the only thing that was preserved in this case.

As to the other arguments that do not have any bearing on this -- or should not have any bearing on this appeal, but I will address them anyway -- there was a number of -- for Your Honor's reference, there was a number of documents that the Defendant wanted to put into evidence, that the judge ultimately declined to. As Your Honor is aware, the admission or exclusion of evidence is usually typically within the discretion of the trial judge's actions by showing an abuse of discretion. There has not been any assertion of that here, and I don't think any discussion was made of that, or allegation.

There were hundreds of photographs. I don't know if there were thousands, but there was many photographs that the Defendant sought to introduce. And the judge did let some in. They were mostly duplicates. They were -- they showed nothing remotely relevant. And that is ultimately what the judge decided with the large volume of those photographs.

The DHEC letter was a letter from a gentleman who apparently went out there. It was not appropriate for authentication reasons, it was simply a letter someone wrote. It was not a formal official document. It was a letter that the gentleman from DHEC wrote. And it had nothing to do with the nature of these charges. It simply said that there was -- at the time he went out there was no areas harboring mosquitoes. And I don't recall the date and time he went out there, but apparently it was one time, whenever.

The testimony that was provided, though, did indicate there were many spots that would harbor mosquitoes, at least when our folks went out there multiple times. So it was merely a conflict in the time that he -- apparently the time when the DHEC gentleman went out there was not the time that we were citing her for.

The City of Columbia employees trespassing on property, that did not occur. I think the testimony actually addressed that. He never -- at no point did he ever step foot on the property. It is an open lot and he simply had a camera there to take pictures of the trash.

Ultimately, what we had was -- and there were

the buckets lined -- 50 or so buckets lining this piece of land. And they -- the wind would blow them over and water would fill them up. And the water -- there was quite a bit of rain, so the water would fill the buckets.

In the middle of the property there is a -- this is a picture that shows there was a bunch of piled up stuff. There was wood and jagged metal and trash cans and buckets and chain. I mean, it is just a bunch of everything. And it was rotting and rusted.

I think the testimony could establish that it was multiple complaints, not just the theory that it somehow evolved around Steele and Mason, because there were numerous complaints from the community about that piece of property.

In the selective prosecution he outlines that they initiated an investigation after there are complaints, and there were many complaints. It wasn't that the City initiated the investigation at the outset. The community did.

Regarding the tainted jury pool, the trial judge did address that. There is nothing improper about one judge qualifying the general jury, because there are more than one person's trial that

we qualify.

Judge Solomon, who was only going to handle Faltas' trial, he was not a general trier of any jury trial that was going on in addition to hers. Judge Bogan did qualify. There was some argument about whether or not Faltas would be able to have the juror list because there were issues of that before.

And, ultimately, Judge Solomon reviewed everything. I think he even acknowledged that, Giving all credit to what you say, assuming everything you said is true, it still doesn't convince me that there was anything improper that went on.

And I think they also listened to the audio of the jury qualification. And he was not convinced that anything was to the level of needing to disqualify the jury.

I don't even know if I need to address the fact that there are no immigrants on the jury. It is a jury of peers of the City of Columbia citizens.

She put up -- and I don't know if I should address the part where the South Carolina law provides that a defendant goes first in closing

arguments. She chose to put up a defense. She knew about that going into the trial. She shouldn't be surprised if she gets to argue first in that respect.

And the fact that she wasn't sworn as a witness, her expert, first of all, she is the Defendant. Second of all, her expertise has nothing to do -- no job qualification for making any determination on rules and regulations of DHEC or state or city. She has no expertise there. She's a medical doctor. Never once testified as an expert in that respect. And it wouldn't make much sense for her to be an expert in her own trial. But the judge heard the argument for it, and he ultimately decided that he didn't feel it warranted her to testify as an expert in this case.

And, again, none of that was -- the grounds are very clear here.

And, similar to the other one, there was no request for proceeding *pro se* in this case. In fact, from all the transcripts that were going to be provided -- and I feel certain that we could provide transcripts where she actually asked for an attorney, or demanded an attorney. So I don't know how Your Honor is going to handle that, but there

are conflicting messages coming from Dr. Faltas. At times she demands an attorney, and other times she demands to appear *pro se*. It does change a few times. So there is going to be that issue that Your Honor will see in those other transcripts.

THE COURT: Any response, Dr. Faltas?

DR. FALTAS: If it pleases the Court? And I'll try to be very brief, but I hope I don't leave anything out from the representations that he made.

First, all of it was preserved because I was allowed before sentencing to make a motion for a new trial. 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.

I was acquitted of everything else. There were three other pending cases. Thank God I was acquitted of all three. And there was only two. You will see that the sentencing for the property is also in the transcript of the assault case.

THE COURT: Yes, ma'am, I read that.

DR. FALTAS: Thank you, Your Honor. And so I was allowed to make a motion for a new trial, and in that motion I raised all the issues.

Now, it is not correct that the DHEC was a letter. In fact, it was their documentation of their activity. It wasn't addressed to anybody. I had gone and gotten a printout. And they stamped it true, the certified true copy, which is self-authenticating. It is their record of what they had done. And it is contemporaneous and it is addressing the same items that the DHEC said nothing wrong with them. But the City said, Blah blah, blah.

In addition, nothing in the property maintenance says you shall not have rusted metal. Nothing in the property maintenance says you shall not have wood. And he claims that the City didn't know until somebody complained. But we have their agent saying that Steele is the only one who gave her name. But all the other ones were anonymous. It is too late in the game to doubt that Steele and Mason operate through their gang of criminal tenants by calling and saying to come arrest this woman. And they have no right to arrest me anyway.

And, in fact, the City's own agent said, I

went there and there was nothing wrong. But the calls kept coming. And the calls kept coming from the very same people who had previously -- we know that because that was proven in General Sessions Court. They tried to frame me for harassment. It was proven in Municipal Court. They tried to frame me for trespass and disorderly conduct, and whatnot. And I was acquitted. So it is the same people. It is too late in the day to doubt that they were -- that that was abuse of power.

And absolutely -- you have the transcript before Your Honor -- I absolutely said, Here is the trespass sign. Here are the men, the City agents, way inside the trespass sign. And specifically he was asked, Did she invite you in there? And he said, I do not recall her doing that.

Also, there was never, ever any testimony that there were mosquitoes. He said there could have been mosquitoes. He theorized that under the circumstances there could have been mosquitoes. But he asked him, Did you at any of the many times go there find mosquitoes? He said, No.

And this is very different from the property maintenance or the International Property Code because trash is different from rubbish. What the

International Maintenance Code forbids is stuff that attracts and fosters vermin. So it doesn't include all of this stuff about rusted metal or wood. It is something that the City of Columbia confabulated, totally separately, totally not included in the International Property, because vermin would not feed on rusted metal, even if it were rusted. And they also said that it was scrap because it was bent in a certain way.

I testified that part of my invention has special kind of shelving that requires the metal to be bent, so they were bent not because they were scrap, but because I had them that way. I had made them that way.

So, I mean, the next thing the City is going to say that if you part your hair to the left you are a criminal. I mean, this goes beyond any focus in the legal long-term. There is no rational government interest in doing that.

Yes -- for example, food debris attracts vermin, but there was no such thing. DHEC looked. There was no such thing. But to say that rusted metal is unsanitary is totally baseless.

Now, none of that is a discretionary finding or a factual finding. Whether that comment that

Dr. Faltas was held in contempt of court and would go bother the jurors, this is not a credibility finding. This is a total error of law. And it is not due any deference. And even the admission of exhibits or evidence is not unfettered discretion of the trial judge, it was clear abuse of discretion.

And the evidence for abuse of discretion is that on April 11, 2013, when I attempted to testify to the jury as an expert on public health issues, which that involved, he said, No, you are not an expert. But on the 12th -- April 25th, 2013, trial when I offered my testimony that it is impossible to have struck somebody in the chest so severely to cause them to turn around, or whatever she said it was. Mr. Fernandez objected, but Judge Solomon said, No, I'll allow it.

Well, you know, I'm always learning, but the difference between April 11th and April 25th, the two weeks, I didn't add that much to my fund of medical knowledge. Either I was an expert on April 11th and continued to be on April 25th or was never an expert. But this shows that even if it were committed to his discretion, he exercised his discretion in an arbitrary matter -- in a manner

contrary to law.

I graduated in 1977 from medical school With Honors. And I also passed all the equivalency licensing examinations in America. And I got my Master's in Public Health degree from the University of North Carolina in Chapel Hill on a Fulbright scholarship. So obviously that -- and I think in some cases the qualification of an expert by the Court -- the failure to qualify an expert who is an expert is not due any deference, but it is the law. There is no room for continued error of law.

THE COURT: All right. Dr. Faltas, what I will do in these matters is I will -- I am going to request that the exhibits be sent to me and that any pretrial hearings involved in these matters be transcribed, so -- and any orders relating to those matters with copies to be sent to both sides.

Let me just state that I ask that neither side provide me any additional information unless I make a specific request for it. I know that sometimes after hearings people want to supplement or add things. I think I have heard your arguments. If I have a question about one of your arguments, I will be sure to contact you about them. But I think

until I receive -- until I have a chance to read both transcripts and receive all the exhibits, then I will be in a position to be able to make a decision. So I ask that there not be any additional information unless I make a request.

Regarding the housekeeping matter as to your bond, I will issue an order that allows the bond, the appeal bond, to be released.

DR. FALTAS: Thank you, Your Honor.

THE COURT: In this matter. I doubt that you'll be able to get any -- be able to retrieve any funds that were deposited with the Municipal Court until next week, but I'll get the orders and have them executed and send them to the appropriate authorities.

DR. FALTAS: Thank you.

THE COURT: Thank you all very much. I appreciate you coming forward and presenting the arguments. And I will review them further.

DR. FALTAS: May I ask that the clerk not give me trouble if I come and see the exhibits and let Mr. Fernandez copy me the additional transcripts?

THE COURT: Yes. And actually I am going to have the City provide them to me. To the extent that Mr. Fernandez gets copies of them, then he

should provide you with a copy of them. And I'll request the exhibits. They will be made a part of the record in the matter, so once I receive them, then they will be part of the appropriate file.

MR. FERNANDEZ: Your Honor, as to that, typically what happens in our court is that the court will prepare the -- will transcribe any of the hearings. They will probably send you a copy and they will likely send me a copy. Typically the court does charge Defendants for transcription costs. And I don't know exactly what the cost is, but it is some sort of fee that they work out. So I don't generally share transcripts with other people. They are supposed to obtain it through the court. I don't know if Your Honor wants me to -- I just expect it to be a number of pages.

THE COURT: I'm sure that it probably will be a number of pages. So I guess -- I don't know how that is handled normally. I know that I get a copy. And if she wants to come up here and get them. I think that if a copy is provided to you, then a copy needs to be provided to Dr. Faltas. I mean, if they only want to give you one copy and it comes to me, then that is a different story. But I'll leave it at that.

DR. FALTAS: I just wonder if Your Honor could extend Judge Manning's order on the transcript.

THE COURT: And I don't know the parties' expenses on that, but that has to be done through an attorney, so if Mr. Tristan -- Mr. Shaffer wants to do that, that's what has to occur. Just because there is an order out there, it has to go through OID. And it is presumed that when Judge Manning -- that when any judge signs an order for somebody who is representing a defendant and someone has been appointed, that those funds come from the Office of Indigent Defense, and they are the ones who administer those funds. And so to the extent that Judge Manning has issued such an order, then the attorney will be responsible for submitting the costs to OID.

MR. SHAFFER: And we have a slight, I guess, disagreement between me and Dr. Faltas, which hopefully will get resolved very soon, Your Honor, regarding that. But I do believe that the statute on the return from a municipal or magistrate court requires that they actually do provide a copy, both parties with a copy. I think it is stated in the statute that they provide them in the return.

THE COURT: And so, as I stated, if the Court

is going to send the City a copy, the City Attorney's Office, then you need to send a copy to Dr. Faltas.

DR. FALTAS: Thank you very much, Your Honor.

THE COURT: Thank you.

(WHEREUPON, the proceedings were concluded at 3:32 p.m.)

(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 13th day of December, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 13, 2015

s/*Deborah M. McCurdy, RPR*

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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

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

BACKGROUND

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

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

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

STANDARD OF REVIEW

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

GROUNDS FOR APPEAL

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ordinance 8-32 reads:

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

Ordinance 8-41 reads in part:

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

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

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

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

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

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

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

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

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

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

6. Whether the ordinances are void for vagueness.

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

The ordinances at issue read in part:

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

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

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

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

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7. Whether Appellant was selectively prosecuted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

AND IT IS SO ORDERED.

ALISON RENÉE LEE
Presiding Judge

August 18, 2014
Columbia, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4003525

City of Columbia
PLAINTIFF(S)

Marie Therese Assa'ad Faltas
DEFENDANT(S)

Submitted by: _____ | **Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

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

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

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

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

David A Fernandez — Tristan Michael Shaffer — Marie Therese Assa'ad Faltas

Marie Therese Assa'ad Faltas

ATTORNEY(S) FOR THE PLAINTIFF(S) — **ATTORNEY(S) FOR THE DEFENDANT(S)**

Court Reporter _____ **Clerk of Court** Jeanette W. McBride

SCRCP Form 4C (10/2011)

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

2014 OCT 24 AM 9:02

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

I. Jurisdiction of the Trial Court

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

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

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

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

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

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

II. Incorrect Facts in the August 19, 2014 Order

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

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

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

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

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

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

V. Right to not be Prosecuted by a City Attorney

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

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

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

VI. Right to a Speedy Trial

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

VII. Other Arguments and Claims of Errors

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

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

AND IT IS SO ORDERED.

ALISON RENEE LEE
Presiding Judge

October 23, 2014
Columbia, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4003525

City of Columbia
PLAINTIFF(S)

Marie Therese Assa'ad Faltas
DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
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Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

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

Jessica Mangum
ATTORNEY(S) FOR THE PLAINTIFF(S)

Orin Gail Briggs
Marie Therese Assa'ad Faltas
Tristan Michael Shaffer
Marie Therese Assa'ad Faltas
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

BEFORE THE SOUTH CAROLINA COURT OF APPEALS

City of Columbia Plaintiff-Respondent
v.
Marie Assa'ad-Faltas, MD, MPH, Defendant-Appellant

RECEIVED
OCT 31 2014
SC Court of Appeals

RICHLAND COUNTY CIRCUIT COURT,
Alison Renee Lee, Circuit Judge
Case # 2013-CP-40-03525, a criminal appeal

NOTICE OF APPEAL FROM JUDGMENT AFFIRMING CONVICTION IN MUNICIPAL COURT AND DENYING TIMELY MOTION TO RECONSIDER

Marie Assa'ad-Faltas, MD, MPH, by her undersigned counsel, timely hereby appeals to this Court from Judge Lee's attached August 19, 2014, and October 24, 2014, ORDERS, respectively affirming Dr. Assa'ad-Faltas' conviction in Columbia's Municipal Court ("CMC") and denying Dr. Assa'ad-Faltas' timely motion to reconsider.

Respectfully submitted on October 31, 2014

Orin G. Briggs
Volunteer Counsel for Marie Assa'ad-Faltas, MD, MPH, Defendant/Appellant
240 Heritage Trail
Lexington, SC 29072
Phone: (803) 957-4383

Certificate of Service

This NOTICE OF APPEAL is served on the Richland County Clerk of Court by hand-delivery to her office, on SC's Attorney General by hand-delivery to his office, and on the City of Columbia's Legal Department by causing Appellant to hand-deliver it to the building where that office is situated and there and then to deliver it to a person known to Appellant to be authorized to take documents from her and give them to the City of Columbia's Legal Department office, all on October 31, 2014, all God so willing.

Orin G. Briggs
Volunteer Counsel for Marie Assa'ad-Faltas, MD, MPH, Defendant/Appellant
240 Heritage Trail
Lexington, SC 29072
Phone: (803) 957-4383

The South Carolina Court of Appeals

City of Columbia, Respondent,

v.

Marie Assa'ad-Faltas, Appellant.

Appellate Case No. 2014-002346

2015 JUN 15 PM 3:27

ORDER

This Court's November 18, 2014 order directed Appellant to obtain new counsel by December 18, 2014. No attorney has appeared on behalf of Appellant. *See In the Matter of Marie Assa'ad Faltas*, S.C. Sup. Ct. Order dated January 30, 2014. Accordingly, this appeal is dismissed. Remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT, C.J.

Columbia, South Carolina

cc:
Marie Assa'ad-Faltas
Orin Gail Briggs, Esquire
Jessica Mangum, Esquire

FILED
6-9-2015

RECEIVED
JAN 16 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
Appellate Case No. 2014-002346

APPEAL from RICHLAND COUNTY Court of Common Pleas
Alison Renée. Lee, Circuit Court Judge
Circuit Court Case No. 2013-CP-40-03525

City of Columbia, South Carolina, Respondent,

v.

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

APPELLANT'S Petition for this Court *en banc* to Rehear and Reverse
Chief Judge Few's January 9, 2015 ORDER Dismissing this Appeal

By her undersigned counsel, AppellantMarie-Thérèse Assa'ad-Faltas, MD, MPH, prays this Court *en banc* to rehear and reverse its Chief Judge Few'sJanuary 9, 2015 ORDER dismissing this matter and to rehear and reverse Chief Judge Few's previous orders in this matter Further, the undersigned Orin G. Briggs, hereby disavows any prior or present intent to take any action contrary toRule 1.16 (b)(1) of the SC Rules of Professional Conduct for Lawyers, Rule 407, SCACR, which provides irrelevant part:

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

Chief Judge Few erred in relieving Dr. Assa'ad-Faltas' volunteer counsel on appeal against the will of both client and counsel and in contravention of Rule 264,SCACR, which provides *in toto:* [with emphasis added]

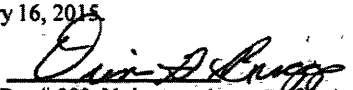
SUBSTITUTION OF ATTORNEYS OR GUARDIANS

(a) Continued Representation. The attorneys and/or guardians *ad litem* of the respective parties in the court below shall be deemed the attorneys and guardians of the same parties in the appellate court until withdrawal is approved and notice is given as provided in this Rule.

(b) Withdrawal. An attorney of record in a matter pending before an appellate court may not withdraw from representation of his client *without* justifiable cause, *or the consent of his client; and then only after proper written notice to his client*, on petition to and by written order of the appellate court, and with notice to the adverse party.

Amended by Order dated January 29, 2009, effective April 29, 2009, by Order of the same date.

WHEREFORE, this appeal should be reinstated
Respectfully submitted onJanuary 16, 2015

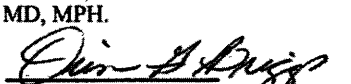


Orin G. Briggs, SC Bar # 883, Volunteer Attorney for Appellant
240 Heritage Trail, Lexington, SC 29072
(803) 957-4383

CERTIFICATE OF SERVICE

I certify that, on January 16, 2015, this document was served, by personal delivery of a copythereof to the City Attorney for the City of Columbia, Attorney for Respondent, at her office located at 1401 Main Street, Columbia, South Carolina, 29201, as proven by the below declaration under penalty of perjury of Marie-Thérèse Assa'ad-Faltas, MD, MPH.

January 16, 2015



Orin G. Briggs, SC Bar # 883, Volunteer Attorney for Appellant

DECLARATION UNDER PENALTY OF PERJURY AS PROOF OF SERVICE OF PETITION IN THIS APPEAL

I declare under penalty of perjury that,on January 16, 2015, God so willing, the foregoing Petition in the above-captioned matter was served, by personal delivery of a complete copythereof with and all attachments thereto, if applicable, to the respective office of the City Attorney for the City of Columbia, Attorney for Respondent, at her office located at 1401 Main Street, Columbia, South Carolina 29201

And further declarant saith not onJanuary 16, 2015.

Marie-Therese Assa'ad-Faltas, MD, MPH

RECEIVED
JAN 16 2015
SC Court of Appeals

RECEIVED
JAN 26 2015
SC Court of Appeals

BEFORE THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA
Appellate Case No. 2014-002346

APPEAL from RICHLAND COUNTY Court of Common Pleas
Alison Renée. Lee, Circuit Court Judge
Circuit Court Case No. 2013-CP-40-03525

City of Columbia, South Carolina, Respondent,

v.

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

APPELLANT'S Timely Petition for a Writ of *Certiorari* and
Motion for the Appointment of Counsel to Represent Petitioner in this Case *before This Court*

By SC-licensed attorney Orin G. Briggs, Appellant Marie-Thérèse Assa'ad-Faltas, MD, MPH, had **on 16 January 2015** timely petitioned SC's Court of Appeals *en banc* to rehear and reverse its Chief Judge Few's January 9, 2015 ORDER dismissing this appeal and subsuming his previous orders herein. Attorney Orin G. Briggs repeatedly disavowed any intent to take any action contrary to Rule 1.16 (b)(1) of the SC Rules of Professional Conduct for Lawyers, Rule 407, SCACR, which provides in relevant part:

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if: (1) withdrawal can be accomplished without material adverse effect on the interests of the client;

Chief Judge Few erred in relieving Dr. Assa'ad-Faltas' volunteer counsel on appeal against the will of both client and counsel and in contravention of Rule 264,SCACR, which provides *in toto*: [with emphasis added]

SUBSTITUTION OF ATTORNEYS OR GUARDIANS

(a) Continued Representation. The attorneys and/or guardians *ad litem* of the respective parties in the court below shall be deemed the attorneys and guardians of the same parties in the appellate court until withdrawal is approved and notice is given as provided in this Rule.

(b) Withdrawal. An attorney of record in a matter pending before an appellate court may not withdraw from representation of his client *without* justifiable cause, *or the consent of his client; and then only after proper written notice to his client*, on petition to and by written order of the appellate court, and with notice to the adverse party.

Amended by Order dated January 29, 2009, effective April 29, 2009, by Order of the same date.

It is extremely unfair that Attorney Briggs' fear lest his own health fails before he can vindicate his client in this appeal was turned into dismissing this appeal by forcing a withdrawal which could **not** have been **and was *not*** "accomplished without material adverse effects on the interests of the client." And in *Turner* v. *Rogers*, 564 U.S. __ (2011), the U.S. Supreme Court clearly prohibited South Carolina's courts from ordering parties to take, under penalty of incarceration, actions beyond their financial means. Appellant has been found and certified indigent and cannot hire a new lawyer. But SC's Court of Appeals returned the timely, properly filed, attorney-signed petition for rehearing to Mr. Briggs without ruling on its merits or on the merits of the appeal itself. Therefore, this Court should hear this matter on *certiorari*.

Appellant therefore seeks a writ of *certiorari* **and hereby moves this Court to appoint counsel for her in this criminal appeal.**

Respectfully submitted on 26 January 2015 and served the same day by personal delivery of a copy thereof to the City Attorney for the City of Columbia, Attorney for Respondent, at her office located at 1401 Main Street, Columbia, South Carolina, 29201, all God so willing.

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

The Supreme Court of South Carolina

2013CP4003525

City of Columbia, Respondent,

v.

Marie Assa'ad-Faltas, Petitioner.

Appellate Case No. 2015-000144

RICHLAND COUNTY
FILED
2015 MAY -8 AM 10:07
JEANNETTE W. McBRIDE
C.C.P. & G.S.

ORDER

This matter is before the Court by way of a petition for a writ of certiorari to review the Court of Appeals' dismissal of petitioner's appeal. Petitioner also moves for the appointment of counsel. The petition for a writ of certiorari is dismissed. Rule 242(a) and (c), SCACR (this Court will only review final decisions of the Court of Appeals and a decision is not final for purposes of review until a petition for rehearing or reinstatement has been acted upon by the Court of Appeals); *see Aiken Speir, Inc. v. Henry*, 326 S.C. 268, 486 S.E.2d 492 (1997). The motion for appointment of counsel is denied as moot.

C.J.

J.

J.

Pleicones, J. and Beatty, J. not participating

Columbia, South Carolina

May 6, 2015

cc:
Jessica Mangum, Esquire
Marie Assa'ad-Faltas
The Honorable Jeanette W. McBride
The Honorable Jenny Abbott Kitchings

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

June 04, 2015

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

2015 JUN 15 PM 3:27

REMITTITUR

Re: City of Columbia v. Marie Assa'ad-Faltas
Lower Court Case No. 2013CP4003525
Appellate Case No. 2014-002346

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

Enclosure

cc: Marie Assa'ad-Faltas
Jessica Mangum, Esquire

2

2016CP4001444

STATE OF SOUTH CAROLINA
County of Richland County Circuit Court

In the Court of Common Pleas

Marie Assa'ad-Falfas, MD, MPH
Full name and prison number (if any) of Applicant,

vs.

City of Columbia and
Name of Respondent.
State of South Carolina

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. **Place of detention** N/A but I was erroneously sentenced to thirty days (30 days) which sentence was NEVER affirmed but is stayed on bond.
2. **Name and location of Court which imposed sentence** ~~The City of Columbia's Municipal Court,~~ ~~Washington Street, Columbia, SC 29201~~
3. **The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:**
   (a) Ordinance Summons # 201301 of the City of Columbia
   (b) _____
   (c) _____
4. **The date upon which sentence was imposed and the terms of the sentence:**
   (a) 25 April 2013 - Thirty days stayed on bond. No
   (b) other conditions or terms
   (c) _____

5. Check whether a finding of guilty was made
   (a) after a plea of guilty ____
   (b) after a plea of not guilty and trial by jury.
   (c) after a plea of nolo contendere ____

6. Did you appeal from the judgment of conviction or the imposition of sentence?
   Yes, to the Richland County Circuit Court of Common Pleas

7. If you answered "yes" to (6), list
   (a) the name of each Court to which you appealed:
      i. Richland County Circuit Court of Common Pleas # 2013CP40-003525
      ii. S.C. Court of Appeals
      iii. S.C. Supreme Court (only on certiorari)
   (b) the result in each such Court to which you appealed:
      i. 2013-CP-40-003525 affirmed the conviction ONLY but was silent on the sentence
      ii. S.C. Court of Appeals DISMISSED the appeal SOLELY due to absence of a lawyer.
      iii. SC Supreme Court DISMISSED certiorari SOLELY BECAUSE the Court of Appeals had no Rule on rehearing
   (c) the date of each such result:
      i. Circuit Court: 18 August 2014; 24 October 2014; and 9 September 2015
      ii. ~~Court of Appeals: January 2015 and December 2015~~
      iii. ~~SC Supreme Court: April 2015~~
   (d) if known, citations of any written opinion or orders entered pursuant to such results: None published
      i. ____
      ii. ____
      iii. ____

8. If you answered "no" to (6), state your reasons for not so appealing: N/A
   (a) ____
   (b) ____
   (c) ____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
   (a) The conviction has severe collateral consequences on me.
   (b) I was forced to have counsel and he was stunningly ineffective and harmful.
   (c) The very existence of Columbia's Municipal Court violates the Federal Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):
   (a) The conviction can be pulled under my name and prevented me from getting housing, loans, and can be an obstacle to citizenship.
   (b) Please see the Federal habeas case for more details of how ineffective and harmful Orin Briggs was.
   (c) Please see transcript of 13 December 2013 hearing before Judge Lee;
   and (d) the ordinance(s) under which I was falsely convicted violate(s) both the Federal and SC Constitutions in many ways which my forced counsel was too ineffective to raise

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? Not PCR of THIS conviction; but petition to appoint counsel which was in a sense granted.

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? see below.

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

only in federal court but dismissed WITHOUT PREJUDICE

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Please see the 7 January 2016 ORDER of SC's
ii. Supreme Court
iii. Please see PACER for the federal case referenced
iv. in the application which resulted in the 7 January 2016 ORDER.

(b) the name and location of the Court in which each was filed:

i. SC's Supreme Court, Columbia, SC
ii. U.S. District Court for South Carolina, Columbia, SC
iii. _____
iv. _____

(c) the disposition thereof:

i. SC's Supreme Court in a sense granted my request to file
ii. a motion to appoint counsel
iii. The federal court dismissed WITHOUT PREJUDICE, in
iv. part to exhaust state remedies

(d) the date of each such disposition:

i. SC's Supreme Court: 7 January 2016
ii. Federal Courts: please see PACER for case details
iii. _____
iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. None published
ii. _____
iii. _____
iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Only on direct appeal but the ineffective assistance issue was NOT allowed to be raised on direct appeal.

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented: Vide supra

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised: submissions and 13 December 2013

i. hearing before Judge Lee in 2013-CP-40-003525

ii. which was combined with hearing in 2013-CP-40-03522

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective assistance was NOT allowed to be raised on direct appeal.

(b) Federal Courts did not rule on any substance but

(c) wanted exhaustion of state remedies first.

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

(i) Theodore Nichols Lupton, Lexington, SC

(ii) Orin G. Briggs, Lexington, SC.

(iii) Tristan Shaffer, Myrtle Beach, SC.

iii. _____

(b) the proceedings at which each such attorney represented you: Trial and appeal to Circuit Court

i. _____

ii. _____

iii. _____

18. State clearly the relief you seek in filing this application.

Vacate my conviction, refund my bond, and declare the relevant ordinances unconstitutional.

19. Are you now under sentence from any other court that you have not challenged? NO.

STATE OF SOUTH CAROLINA
County of Richland

VERIFICATION

I, Marie Assa'ad-Faltas, MD, MPH, affirmed, being duly ~~sworn~~ upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Marie Assa'ad-Faltas, MD, MPH

Affirmed
~~SWORN~~ to and subscribed before me this 3rd
day of March, 2016.

VSR (L.S.)
Notary Public

My Commission Expires: 8/15/23

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Marie Assa'ad-Faltas, MD, MPH, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Marie Assa'ad-Faltas, MD, MPH
Applicant

Affirmed
~~SWORN~~ or affirmed to and subscribed before me this

_____ day of _____, 19____

_____
Notary Public

My Commission Expires _____.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT OF COMMON PLEAS
No. 2016-CP-40-01444

Marie Assa'ad-Faltas, MD, MPH
v.
State of South Carolina, and City of Columbia, SC

Supplementation of PCR Application with Exhibits

Marie Assa'ad-Faltas, MD, MPH, supplements her PCR application with the attached complete extracted and highlighted transcript of her appearance before SC Circuit Judge Lee on 13 December 2013, with the attached eight photos taken by City of Columbia Code Officer O'Neil on 15 February 2016, and with the attached e-mails from him to the effect that the City of Columbia has no ordinance requiring maintenance of vacant undeveloped land, which 324 Byron Road, Columbia, SC 29209, the site of the purported conviction from which PCR is herein sought, is. The photos are of "leaves and limbs" and "refuse" in land within the City of Columbia's jurisdiction and/or owned by the City of Columbia itself. The purported ordinance of which Dr. Assa'ad-Faltas was unconstitutionally convicted criminalizes *inter alia* "leaves and limbs" but not in undeveloped vacant land. Or the City of Columbia tyrannically and unconstitutionally "puts jail time" on people for failure to clear away what the City itself refuses clear away from its own land.

Dr. Assa'ad-Faltas also incorporated by reference the complete transcript of the 10-11 September 2014 trial of *City of Columbia v. Johnnie Lee Clark and Harriet Terry Clark,* on file with this Court in 2014-CP-40-05599, and available for judicial notice.Dr. Assa'ad-Faltas carefully reviewed the latter transcript and painstakingly had it OCR-ed and extracted it and converted it to the more legible upper-case/lower-case form from the tedious all-upper-case form in which it was filed. Dr. Assa'ad-Faltas seeks leave to e-mail the extracted 10-11 September 2014 transcript to the Court and to the Attorney General.

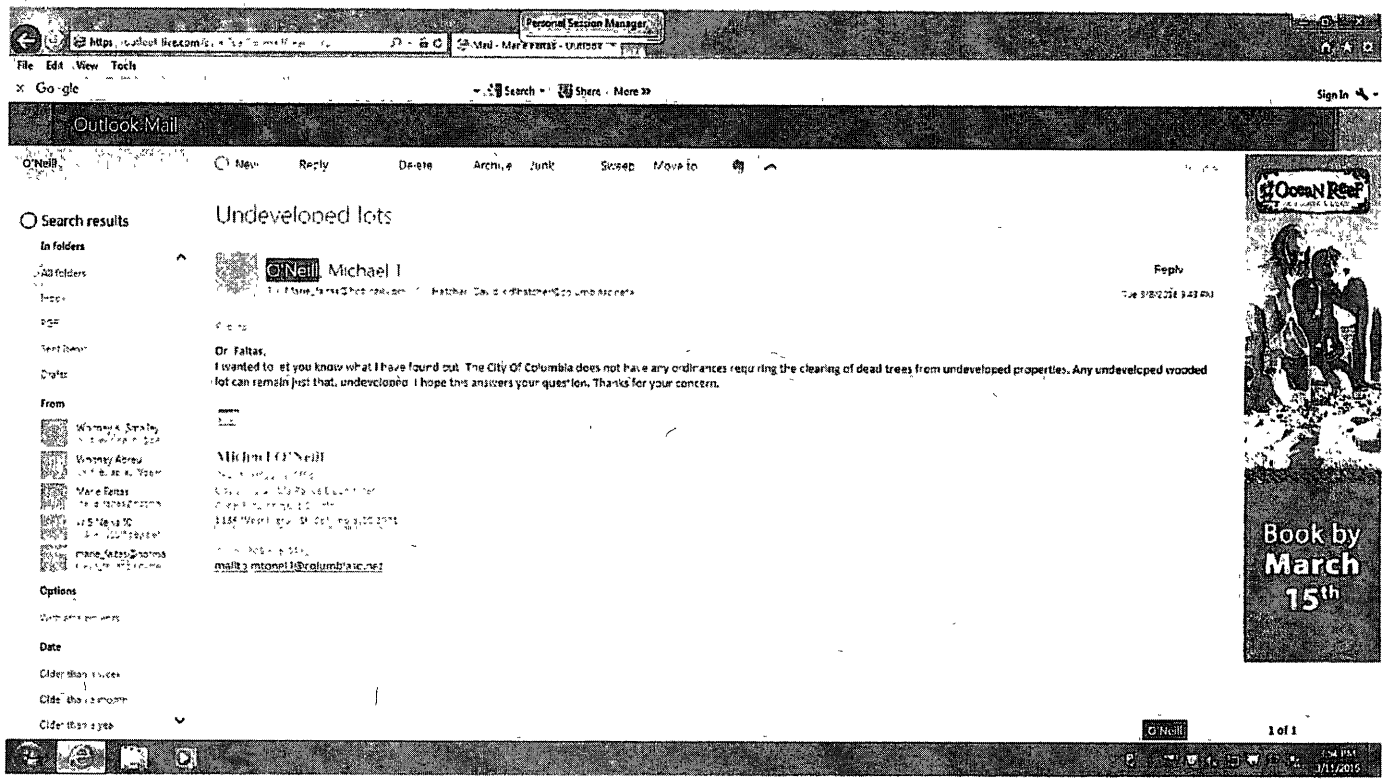
Said transcript corroborates the pathological intractable behavior of Orin Briggs in all trials and hearings in the past two decades in which Orin Briggs, apparently on purpose, goes beyond ineffectiveness to intentional harm to his clients (specially those of color and those who are not of the Bob Jones religion, whatever that is) by latching on to the most losing argument, even when winning arguments and objections are staring him in the face, then obsessively (and often impolitely) repeating the losing points to the irritation of the judge and jury. Orin Briggs exhibited that stunning pathology in Dr. Assa'ad-Faltas' 11 April 2013 and 25 April 2013 sentencing which are subject to this PCR application. Said transcript also proves that, despite Columbia Municipal Court Judge Dennis' high skills and integrity, the City of Columbia is not able to constitutionally own and operate a court at all. Deeper analysis shall, God willing, be filed forthwith.

Submitted and served on SC's Attorney General by hand-delivery to his office on 18 March 2016.

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

RICHLAND COUNTY
FILED
2016 MAR 18 PM 2:19

S.C Attorney General's Office
Civil Division
MAR 2 2 2016
Received by
Reviewed by/Date
Referred to/Date
Notes: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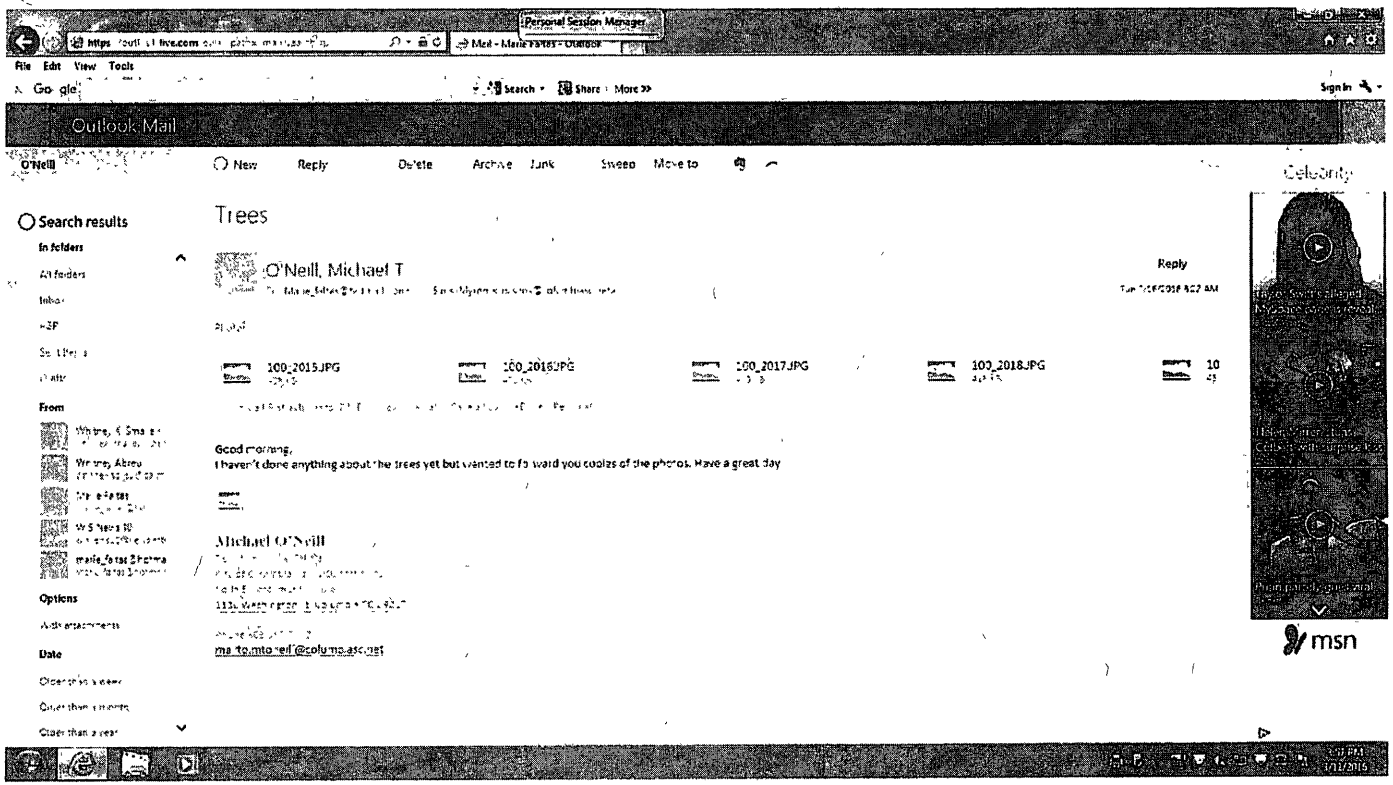
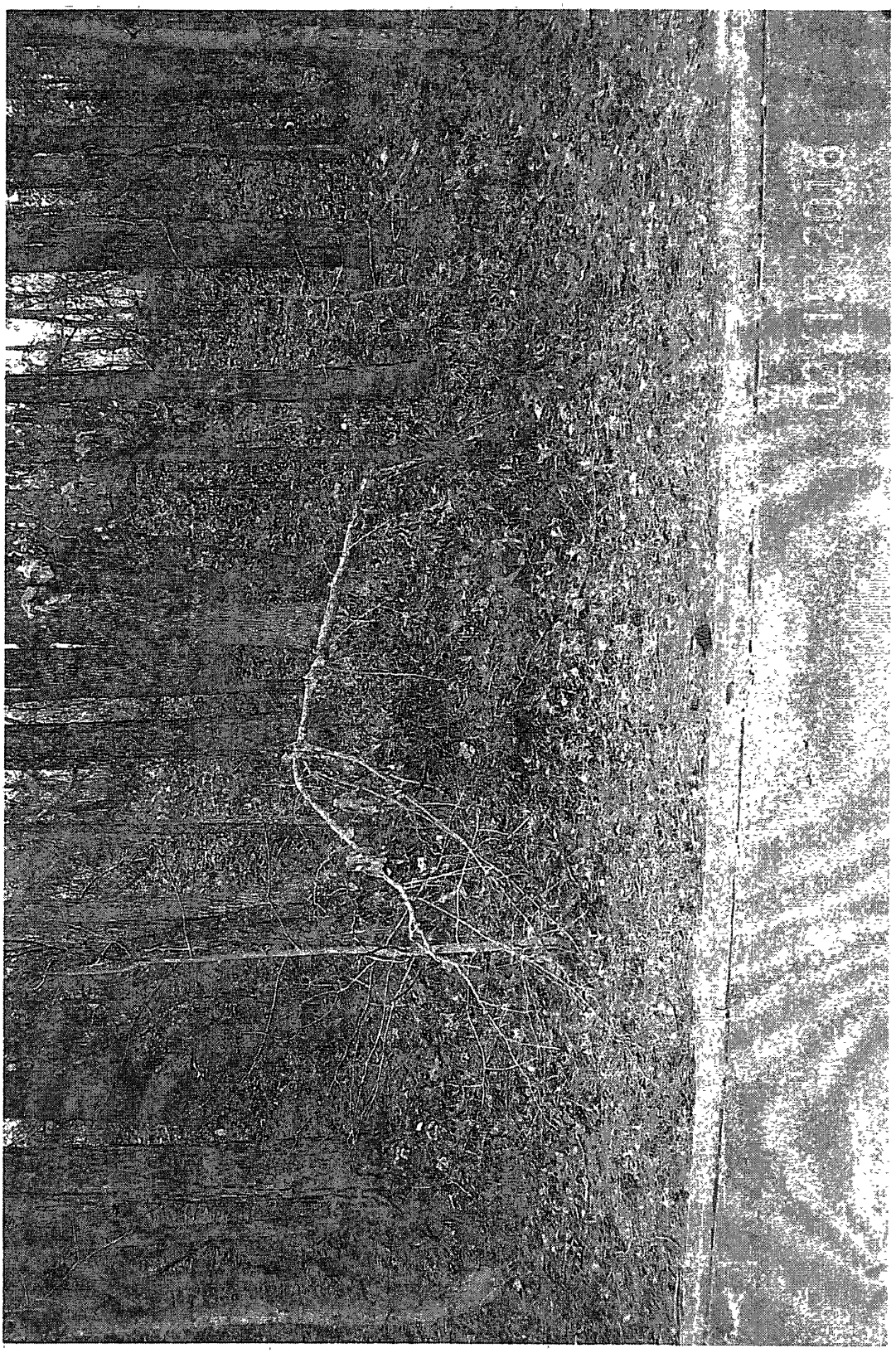
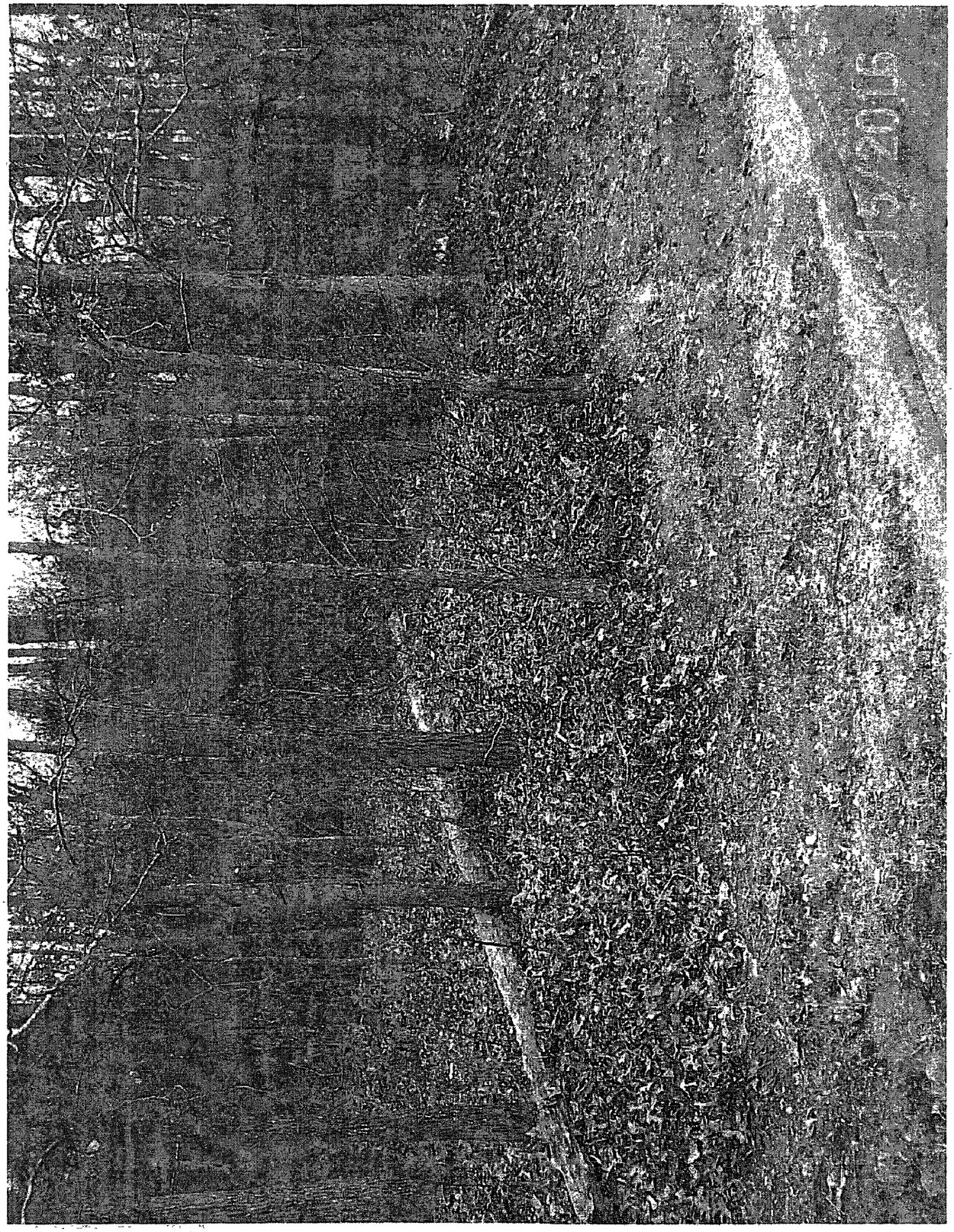
Outlook Mail
O'Neill
New
Reply
Delete
Archive
Junk
Sweep
Move to
Search results
In folders
All folders
PDF
Drafts
From
Options
Date
Undeveloped lots
O'Neill Michael I
Reply
Dr Faltas,
I wanted to let you know what I have found out. The City Of Columbia does not have any ordinances requiring the clearing 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
mailto:mtoneil1@columbiasc.net
Ocean Reef
Book by March 15th
1 of 1


Outlook Mail
Search results
Trees
O'Neill, Michael T
Reply
100_2015.JPG
100_2016.JPG
100_2017.JPG
100_2018.JPG
Good morning,
I haven't done anything about the trees yet but wanted to forward you copies of the photos. Have a great day
Michael O'Neill
msn





STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT OF COMMON PLEAS
No. 2016-CP-40-01444

Marie Assa'ad-Faltas, MD, MPH
v.
State of South Carolina, and City of Columbia, SC

Second Supplementation of PCR Application with Exhibits

Marie Assa'ad-Faltas, MD, MPH, supplements her PCR application with the attached complete extracted and highlighted transcript of the 10-11 September 2014 trial of *City of Columbia v. Johnnie Lee Clark and Harriet Terry Clark,* on file with this Court in 2014-CP-40-05599, and available for the Court's judicial notice. Dr. Assa'ad-Faltas carefully reviewed the latter transcript and painstakingly had it OCR-ed and extracted it and converted it to the more legible upper-case/lower-case form from the tedious all-upper-case form in which it was filed. Dr. Assa'ad-Faltas seeks leave to e-mail the extracted 10-11 September 2014 transcript to the Court and to the Attorney General with the original version filed herewith.

Said transcript corroborates the pathological intractable behavior of Orin Briggs in all trials and hearings in the past two decades in which Orin Briggs, apparently on purpose, goes beyond ineffectiveness to intentional harm to his clients (specially those of color and those who are not of the Bob Jones religion, whatever that is) by latching on to the most losing argument, even when winning arguments and objections are staring him in the face, then obsessively (and often impolitely) repeating the losing points to the irritation of the judge and jury. Orin Briggs exhibited that stunning pathology in Dr. Assa'ad-Faltas' 11 April 2013 and 25 April 2013 sentencing which are subject to this PCR application. Said transcript also proves that, despite Columbia Municipal Court Judge Dennis' high skills and integrity, the City of Columbia is not able to constitutionally own and operate a court at all. Deeper analysis shall, God willing, be filed forthwith.

Submitted and served on SC's Attorney General by hand-delivery and e-mail to his office on 25 March 2016.

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

2016 MAR 25 PM 3:56
CLERK OF COURT
RICHLAND CO., S.C.

State of South Carolina **County of Richland** **In the Columbia Municipal Court**

City of Columbia,)
Vs.)
Johnnie L. Clark and)
Harriet Terry Clark, **Defendants**)

Transcript of Record
68898GJ, 68853GJ, 51422GQ,
46768GQ, 75634GH, 75637GH

Jury held before the Honorable Steven D. Dennis, presiding judge, and jury, in the Columbia Municipal Court, Columbia, South Carolina, on September 10, 2014.

Appearances: Jessica Mangum, Esquire — Appearing for the City
Orin G. Briggs, Esq. — Attorney for the defendants

Transcribed by: Nancy S. Ahrens

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[page 1, line 1 to page 2, line 5] **The Court**: The *Gardner* which arose out of this court, Judge Popowski, and appealed to the Circuit Court and Circuit Court Judge Henry McKellar overruled her when she found, not this particular noise ordinance we are dealing with in this case but a very similar city noise ordinance with similar language and the same standard which is important that the standard be the same, and it's unreasonably loud. So the question that I've been

wrestling with since Monday was: Is the term unreasonably just too vague? Does it put, as Justice Toal said in her dissent, does it put too much authority in the ear of the officer and not enough guidance to the average citizen as to what's prohibited and what isn't? So I've been wrestling with that. I don't have to wrestle with it because judge McKellar has already told me that it's not vague or overbroad and he cites both 4th Circuit and United States Supreme Court cases. I actually found the *Rockford* case myself in doing some research but it's difficult. This is a disturbing school case and it deals with just adjacent property while school was in session so I think that's a special case. You probably have more police power there than you do just in the average situation. But the *Kovacs vs. Cooper* case unreasonably loud is not unconstitutionally vague. So while I've been wrestling with it somebody else already knew the answer and I just didn't know where to find it but I think we've found it now. Mr. Briggs, I'll give you a minute to argue against me if you want to; but I think the contents of the *Gardner* order - well, for one thing, I think judge McKellar's ruling is binding on me. He's a circuit judge in [page 2] this county and he's above me. I have to do what he tells me to do and, second, when he starts citing Supreme Court and 4th Circuit cases I know they are binding on me. So I think the decision was already made before I started trying to find the answer. I'll shut up and listen. If you want to argue against me you can.

[6 to page 3, line 22] **Mr. Briggs:** I do want to argue just briefly, Your Honor, and then if I could at the appropriate time I would like to just review my memo again and I think I've got about fifteen points marked. It wouldn't take me but three or four minutes to do that. On this point I still make the argument I've made all along, Your Honor. And you're probably a better history person than I am. But I have to remember that the First Amendment to the Constitution shows the intent and desire and commitment of most of the people who came from Europe to found this country, Your Honor. They were oppressed in their religious beliefs over there. And if it's not - it shouldn't be utilized that [illegible] we are talking about is the First Amendment to the Constitution. I have read *Gardner* briefly but the application to [illegible] part of something out of [illegible]. You've got to know the ruling and I don't even remember now *City of Loris* or by the factual content, Your Honor, but my point is in making what I've said is while I respect him and consider judge McKellar a friend of mine his opinion is not worth two cents compared to the federal cases that I've cited in my memo, Your Honor. The law on free speech and freedom of religion is solely governed by federal cases, *i.e.*, U.S. Supreme Court cases. And I [page 3] haven't heard anybody say that *South Carolina vs. Edwards* is not good law or that *Furr vs. Swansea* is not good law or that even those state cases that I cite aren't good law, but they are secondary. This law is governed by federal cases and I notice that counsel for the City argues again the *Fisher* case. And I believe you have probably read by now the new ordinance which would completely nullify that case because now they've got decibels in it and they've got distance in it. And I got that straight from Bill Harvey, Jr., [illegible] Harvey, III, he is - law clerk and that's the latest version of that ordinance. So I believe that our supreme court - and this case is going to go there if my client doesn't win - would come to the conclusion this late in the game you've got to have some numbers in the ordinance to pass muster because, Your Honor, what you've really got - you said you've got the opinion of police officer - what you've really got is the opinion buying the argument of the complainant and you are letting a citizen set the standard. And what you've got -and I'm going to end with this, Your Honor - you've got two citizens trumping thirty members of the church, a church and both provisions - both speech and both provisions of the freedom of religion clause, you've got two people trumping all of that. That's not good law.

[22 to page 5, line 15] **The Court:** And I don't have to respond. I made this rule but I want to respond. I am going to agree with you, Mr. Briggs, that where the First Amendment is involved, whether it's speech or religion, that in order for the state to impose any restrictions the [page 4] scrutiny is the highest level possible. And all the cases I have read, including ones quoted in the *Gardner* case used the highest scrutiny possible to find those ordinances constitutional. You are right, that is the standard, it wouldn't be a higher standard. **The ordinance I believe is content neutral. Obviously if it weren't content neutral it would be automatically unconstitutional but I don't think the ordinance prohibits your clients and other parishioners from any content that they want to have. It's merely the noise level.** There's two ways of looking at putting decibels in the ordinance and honest men may disagree. By having decibels in there you do have an absolute standard but then you have the inflexibility that comes with not being able to vary it depending on the circumstances and the situation. And that's sort of the whole crux of the three-to-two decision by the state supreme court. The three who thought the ordinance was constitutional, who thought the word reasonably gave flexibility and that was a good thing to them because you could apply it to various circumstances. And then the people - Justice Toal and the other Justice who decided they didn't think it was constitutional. They thought it gave too much flexibility and they wanted rigidity. So you can look at the flexibility as a plus or minus, depending on how you look at it. And you mentioned the complainants get to bring the charge. My understanding is that these cases have been brought on tickets by officers, not courtesy summonses. And that means to me that the officers went out and investigated prior to bringing the cases. So [page 5] the complainant may have called the officer's attention to the situation but the actual charge was not brought by the complainant. **The actual charge was brought by an investigating officer so you actually had two filters here. You had the filter of the residents, the neighbors, whether they felt it was bad enough to call and report it and then secondly the investigating officer. So in many of those cases where the courts found things unconstitutional they were concerned about a single officer running ramp ant and writing people tickets or arresting people on his own judgment. In this case you actually have two filters, the complaining citizen is not interested in locking people or messing with people on an average day.** They want to mind their own business. And then the officer who comes and further investigates. So I think that's actually a plus having two filters instead of one. Yes, ma'am?

[10-20] ***Ms. Mangum:*** Your Honor, if I could just add there were times the officers went out to the residence and to the church and did not witness anything and so, therefore, did not write a ticket and the victims do have some pending courtesy summonses on those cases.
[21] **The Court:** Okay. We are not trying any of those today?
[22-23] ***Ms. Mangum:*** No. Everything before you today is based on a ticket that was issued by an officer who observed the behavior.
[24-25] **The Court:** Mr. Briggs, I don't want to cut you off. Anything else you want to go over I'll be glad to let you say, sir.

[page 6, lines 1-9] **Mr. Briggs:** Yes, I want to do two things, Your Honor. I want to note in the - I don't think I have all the incident reports and I'm not complaining about that. If one comes up that an officer is going to talk about I'll just ask for a copy, Your Honor. I've got all those that were attached to the affidavit of Ms. Callahan when they filed the complaint, Your Honor, so I've got a good many of them: In reviewing that, there's only one situation where the officer claims he had sixty decibels. And, Your Honor, you have read the new Beaufort ordinance, haven't you?

[10] **The Court:** I glanced at it. I did not go into detail.
[11-12] **Mr. Briggs:** It has seventy-five in it, Your Honor, at a distance of fifty feet.
[12-14] **The Court:** Yes, but our standard is unreasonably. That's the standard we'll be trying today.

[15 to page 7, line 11] **Mr. Briggs:** Okay. Now, Your Honor, there are a couple of things that I did not point out and I'm sure it won't take me more than five minutes so let me just continue. If you want to look at my memo there's something that I had thought about but didn't point out. I am on page two. The first point is I am convinced and I'm arguing that the language at the top of page two of my memo casts directly on the public streets and places in such a manner modifies, Your Honor, every or clause in section "a" or is it "b"? Section "a" I will leave that for you to think about but I believe that that - in order words, this is one similar to the case that counsel of the City cited where they actually had speakers outside the church or *[page 7]* building and they were broadcasting on the street. They intended to broadcast on the street. So this one is similar to that in that wording. Now that doesn't necessarily address the "c" because some of them were addressed in "c" and I think it's even vaguer than the other although it does have unreasonably disturb persons in the vicinity or in such a matter or repose on neighbors' premises. I don't even know what that means. I guess I should study my English better. But anyway it's still talking about sound amplification. So I point out that major flaw, if you will, or problem with "a." I don't expect the court to rule on it right now unless you want to. So that's my first point.

[12-14] **The Court:** Well, I don't know at this point how many of them are brought under subsection "a" and subsection "c." I don't know the facts and I haven't even seen the --
[15] **Mr. Briggs:** Well, I can return to that, Your Honor.
[15-17] ***Ms. Mangum:*** I can solve the problem right now because everything before you today is under "c."

[18-19] **The Court:** "c" seems to be more appropriate when just given what little tiny bit I know about it.

[20-24] **Mr. Briggs:** The problem I have with that is it's titled creating public nuisance, Your Honor. I didn't stop to go and search a number of laws but I know there are a number of cases that say in this state that a person who moves to a nuisance cannot later complain about it. This guy lived there for four years before there were any complaints, Your Honor, and I just refer that --

[page 8, lines 1-2] **The Court:** That would be good civil law but it doesn't apply in the criminal courtroom.

[3-5] **Mr. Briggs:** Okay. I just put that on the record, Your Honor. I am now on page three, Your Honor, and just want to touch base on a couple of points in the *McCoy* decision.
[6] **The Court:** Yes, sir. I've read it.
[7-9] **Mr. Briggs:** And it was a good written decision. Anderson does a good job.
[9] **The Court:** He's one of the best judges around.
[10-19] **Mr. Briggs:** The point I would make is this. I believe that every case we have talked about - *Furr, Edwards,* the *McCoy* case, *City vs. Houston* - every one of them the offense that people were guilty of - and again Anderson clearly says in that long paragraph, after I say then Anderson says, he clearly says in the words of the ordinance this conduct surely interfered with or molested the police officers in the lawful discharge of their duties. So McCoy was guilty of violating the ordinance and I think all of these violations in these other cases is more serious than a little bit of noise.

[19-20] **The Court:** But it's just not a noise case. It is a vagueness and breadth case -
[21-22] **Mr. Briggs:** I understand, Your Honor, but it's still a First Amendment case.
[23-24] **The Court:** And it offered me some guidance on vagueness and breadth.
[24] **Mr. Briggs:** And he ruled it was vague.
[page 9, line 1] **The Court:** And breadth.
[2] ***Ms. Mangum:*** He ruled it was vague.

The Court: When I've got again the order in the *Gardner* case which directly quotes 4th Circuit and U.S. Supreme Court cases saying unreasonably is reasonable. I don't need to go picking in the weeds of *McCoy* to try to find something that's already been discovered. And they brought it (inaudible) parked it and it's sitting there, I don't have to go looking for it. It's right there in front of me.
Mr. Briggs: But *Edwards* would nullify that, Your Honor.
The Court: *Edwards* is actually quoted in the school case, the noise next to the school which I don't have a copy of right here.
Mr. Briggs: Your Honor, I -
The Court: So Edwards is used in a case where they end up finding the ordinance to be constitutional. And that case was even worse in a way. It was a bunch of people having a civil rights protest.

Mr. Briggs: About a hundred and eighty-seven, Your Honor, demonstrating.
The Court: If that's not political speech at its highest, I don't know what is; and yet they did determine that that ordinance was constitutional.
Mr. Briggs: That is U.S. Supreme Court.
[page 10, line 1] **The Court**: Yes, sir, U.S. Supreme Court.
Mr. Briggs: Your Honor, I'm not even going to read it but on page four I call the court's attention again and for the record to show that paragraph at the top of the page is quoted twice in my memo. I think it's very pertinent, very good law and it's a brief description of, if you will, the test for vagueness. So I won't read it, I'll just note it again.

The Court: There's no doubt, Mr. Briggs, *City of Houston* is a preeminent case in the vagueness field. Again, it doesn't deal with a noise ordinance. It's guidance in what the test for vagueness is but it's not determinate.

Mr. Briggs: And, of course, you know this. I've got it as my number five point, the sentence in the bold -- and I think it's worth reading again for the record so the record shows what I argued -- based on the above the ordinance is facially unconstitutional and as unduly vague. That's what Anderson said of the City ordinance in the McCoy case.

The Court: And, of course, we are dealing with a different ordinance.
[20 to page 11, line 13] **Mr. Briggs**: And again but I argued down of the bottom of page that it's applicable to a noise ordinance because you are talking about the same kind of standard, *i.e.*, does it meet muster, Your Honor. And I quoted that number four again on the top of that page so I, of course, won't read it again. I am going to read, Your Honor, in the middle of page five and I've got beside it the point I [page 11] made before. The conduct here I believe is worse than the conduct in the instant case. The court says - well, I'm writing here - but the Houston ordinance was similar to the instant statute in that it attempted to punish words alone. That's why the Houston case is apposite, Your Honor. On this issue the Supreme Court at a certain page noted, quote, accordingly, the enforceable portion of the ordinance makes it unlawful for any person to in any manner - here's the wording now - oppose, molest, abuse or interrupt any policeman in the execution of his duty and thereby prohibits verbal interruptions of police officers. Now those four words are pretty clear, Your Honor. But what was the result of them? The result of them was to deny free speech and that's what you've got here. You are denying free speech with, quote, some good words.

The Court: Once again though, the ordinance has to be content neutral which it appears to be. It's merely the volume that's the issue, not the content. They can say anything they want, they can say it any time they want as frequently as they want. They just can't say it as loud as they want.

Mr. Briggs: There are cases that say loud is part of the content, Your Honor.
The Court: I have not seen that case.
Mr. Briggs: *Terry* said that.
The Court: That argument could be made.
[24 to page 12, line 10] **Mr. Briggs**: And, Your Honor - and I'm going to quit with this. I'm not even going to go through the rest of it, but I can't talk [page 12] about free speech without reminding a court of the very foundational case in all of this law and it's the bottom of page eight and, of course, *Houston v. Hill* quotes from it. It's *Turmanelo (Ph.) vs. Chicago*, a 1974 case which is still good law. Speech is often provocative and challenging but it is nevertheless protected against censorship or punishment unless shown likely to reduce - now this is key language here - a clear and present danger of a serious substantive evil that rises far above inconvenience, annoyance and unrest. We've got annoyance in this case, period. And it ain't enough to takeaway a First Amendment right.

The Court: Again, First Amendment right as I read those cases refers to content and as long as this ordinance is content neutral then it's not regulating speech, regulating the manner of speech.

[13-16] **Mr. Briggs:** Your Honor, I disagree with you. I've been doing this kind of stuff now for twenty years.
[17] **The Court:** You have, yes, sir.
[18-21] **Mr. Briggs:** And that's not the definition because they are not meeting that standard. It's not clear, objective, and there is too much discretion on the part of the police officer in this ordinance. So ...

[22 to page 13, line 14] **The Court:** I think that's the argument, the best argument made for your side, and it's one that worries me and that's why I spent most of Monday afternoon and part of last night looking this over again and doing my own research also. But once I [page 13] got the *Johnny Gardner* order and judge McKellar was quoting *State vs. Hardee, City of Columbia vs. Moser, Jim Crockett vs. City of Charlotte,* and then *Kovacs vs. Cooper* and *Grayned vs. Rockford*, those cases just sealed it up for me when they decided that the flexibility in the word unreasonable was a plus and not a minus because again I think you can see it two ways. One person can see it one way and one another but these courts have all seen it as a plus, not a minus. **I think honest people would disagree but when the court tells me that's what it means or that's the import of it, that it is flexible and a plus, not a minus, then I don't have to make the decision any more. I just have to do what the court told me to do. So I'm not looking at this as a case of first impression where I'm making the decision. I'm looking at this case where I have previous cases for me to rely upon.**

[1-12] **Mr. Briggs:** Your Honor, I want to make sure that the copy of my motion to dismiss that I gave you would be entered into the record.
[13] **The Court:** I can do that.
[13] **Mr. Briggs:** Okay.
[20-23] **The Court:** Would you please make that a part of the record. Now I hope I've ruled on all the motions. I've not tried to leave any out there hanging. If there's any hanging, somebody tell me where they are so I can make sure there is a ruling in the record. I don't want to make a mistake by not ruling on something. All right. We are satisfied on that?

[page 14, lines 1-2] ***Ms. Mangum:*** I have checked everything off my list, Your Honor.
[3] **The Court:** Okay.
[4-9] **Mr. Briggs:** Your Honor, I need to tell the court something. I am going to make two other motions but one of them needs to be done when something comes into evidence, but the second one is I'm going to object profusely if the officer who was at the harassment hearing that you held tries to bring in old, unrelated criminal matters.
[10-11] **The Court:** Well, I think those need to be taken up on a one-by-one basis.
[12] **Mr. Briggs:** I will cite the rule.
[13] **The Court:** Some may be relevant and some may not.
[14] **Mr. Briggs:** When we get to that point, yeah.
[15-16] **The Court:** That's why there's a rule that tells us which one is and which one isn't.
[17-18] **Mr. Briggs:** I think we probably ought to excuse the jury for that one, Your Honor.
[19] **The Court:** Yes, we can do that.
[20-21] ***Ms. Mangum:*** Your Honor, just for clarification, what harassment charges?
[22] **The Court:** I set bond back in -
[23] **Mr. Briggs:** It was something we did.
[24] **The Court:** (inaudible)

[25 to page 15, line 2] ***Ms. Mangum:*** No, I understand. I was not clear if that's [page 15] what you were referring to or something farther in the past. I understand.
[3-4] **Mr. Briggs:** A new charge which we go to big court we decided.
[5-6] **The Court:** And obviously the officer read previous arrests and convictions.

[7-10] **Mr. Briggs:** And didn't even know whether they were convictions or arrests. Your Honor, could I ask a question that I asked counsel last night. She was kind enough to answer my telephone call. What was it, about seven o'clock, Ms. Mangum?
[11] ***Ms. Mangum:*** I'm not sure what time it was.
[12-22] **Mr. Briggs:** But anyway I still believe that the Beaufort ordinance as it is written now has some validity and some instrumental value (inaudible) if we were to, quote, bifurcate the case. Go on and try these cases. I mean they are valid citations except they are presumed to be constitutional and all that bit but, you know, we had a discussion of whether or not you could even use the ordinance even now by passing some kind of decibel reading to it. I'm just suggesting that we've got some brains and intelligence and experience here. We might take some of the time to try to decide whether the City wants to go on ...
[22-23] **The Court:** That's purely for City Council and their (inaudible). That has nothing to do with me.
[23] **Mr. Briggs:** Ordinance post this trial, Your Honor.

[25 to page 16, line 1] **The Court:** That's up to City Council and if they want my [page 16] opinion they'll ask for it and they never have so ...

[2-3] ***Ms. Mangum:*** Your Honor, I do have a potential witness list and some *voir dire* if you want to --

[4-12] **The Court:** Why don't y'all share and - give me a copy of the *voir dire* so I can look at it. But along those lines, **Mr. Briggs, not to keep the thing going because we need to move along, your argument I think is that you could write a better ordinance. I think it was the *Rockford* case or - I read so many cases yesterday I don't remember which one - said as long as it's constitutional it doesn't have to be the least intrusive way of doing it. Just because you come up with a better way doesn't mean this way is not legal. So the goal is not necessarily to have the perfect way, just to have one that is legal.**

[14-23] **Mr. Briggs:** Your Honor, while we have got just a minute I would respectfully ask the court that both the Apostle Clark and his wife who we refer to as Dr. Clark could discreetly remove themselves from the courtroom or he can stand up, whatever he needs to do about the medical situation but that they be careful and not do it in the middle of the questioning or something like that, Your Honor.

[24] **The Court:** I'm not sure I understand you.

[25-25] **Mr. Briggs:** Remember his doctor said he needed to sit down and stand up.

[25] **The Court:** He can do that and I told him he could.

[25 to page 17, line 1] **Mr. Briggs:** Okay. And then Dr. Clark, she has - is it [page 17] proper to call it a bladder problem? So she may have to leave --

[2-3] **The Court:** Well, she's not even a defendant. She can get up and come and go as she pleases.

[3-4] **Mr. Briggs:** Actually she is a defendant, Your Honor.

[3-9] **The Court:** Well, I haven't seen the charging paper so I don't know. Nobody has ever showed me the secrets.

[9-10] **Ms. Mangum:** I was going to show this to you. It's just a chart of -- Your Honor, I showed it to plaintiff's counsel. This is a chart of the charges that are before you today, just to perhaps try to keep it in some sort of order.

[11-12] **The Court:** Am I to assume that only one ticket is written to Ms. Clark?

[13] ***Ms. Mangum:*** Yes, Your Honor.

[14-15] **The Court:** The other one doesn't say who it was written to but those are Mr. Clark?

[16] ***Ms. Mangum:*** The others are all Johnnie Clark.

[17-18] **The Court:** All right. Mr. Briggs, let's start with the *voir dire* and see if you have any objection to any of those questions.

[19] **Mr. Briggs:** That you've done already, Your Honor?

[20-21] **The Court:** No, the written *voir dire* that she's requesting, however many - fourteen questions.

[22] **Mr. Briggs:** Oh, yes.

[22] **The Court:** Tell me who Tim Ellis is.

[24] ***Ms. Mangum:*** He is one of the victims.

[25] **The Court:** And who is Sherry Callahan?

[page 18, lines 1-2] ***Ms. Mangum:*** She's also a victim. They live in the house immediately next to the church.

[3] **The Court:** Okay. And Ms. Hogan and Mr. Hogan likewise?

[4] ***Ms. Mangum:*** Those are Sherry Callahan's parents.

[5] **The Court:** Okay. And Ms. Desrocher?

[6-7] ***Ms. Mangum:*** She is another neighbor in the neighborhood where the church is.

[8] **The Court:** All right. Thank you.

[9-11] **Mr. Briggs:** Your Honor, I have two suggestions. I think the question fourteen ought to be moved up somewhere. We think it's very important that they see the two defendants and they see -

[12-13] **The Court:** I always ask that anyhow so that's going to be asked. It sure is.

[14-15] **Mr. Briggs:** See the two complaining witnesses, Your Honor, and, of course, the officers if the other one is here. And I'm not sure how to express it but I have a problem with number nine.

[17] **The Court:** I do, too.

[18] **Mr. Briggs:** It seems to be too broad and --

[18-22] **The Court:** Well, there is a case that obviously says that you can't ask if you believe a police officer over another person. So if you can't ask that for one profession I don't think you can ask it for any other profession.

[23-24] **Mr. Briggs:** Other than that, I go along with all the others, Your Honor.

[25] **The Court:** Okay.

[page 19, line 1] **Mr. Briggs:** Are we going to strike nine?

[2] **The Court:** Six and - do you think we'll finish today?

[3] ***Ms. Mangum:*** I certainly hope so.

[4] **The Court:** Hopes are one thing.

[5] **Mr. Briggs:** I'm not long, judge.

[6-8] **The Court:** Give me a list of your potential witnesses, Mr. Briggs. Mr. Clark and Ms. Clark. Do you have any other potential witnesses?

Mr. Briggs: Yes, I have my friend Thomas - I always still forget his last name?
unidentified: Borders, Your Honor.
Mr. Briggs: Borders. And - you say there was one other person who had some knowledge?
unidentified: She's in the hospital.
[redacted] I won't get into the facts but we did do something about my suggestion of finding [redacted] to [redacted] this morning. I expect the [redacted] to be here to the court this morning to have testimony and a signed estimate of that, so I would call that person as a witness so we are talking about --
The Court: What relevance is that?
Ms. Mangum: Yes, Your Honor, we would object to that.
The Court: I don't see any relevance.
Mr. Briggs: Your Honor, if they are going to put in criminal records, I've got to put in something to show he's a nice guy.

[page 20, lines 1-2] **The Court: The question is not whether he's a nice guy or not a nice guy. The question is whether-**

Mr. Briggs: The question is not whether he's ever been convicted of some risky-dink crime.
The Court: We'll find out. If he takes the stand --
Mr. Briggs: It has nothing to do with whether or not they violated this ordinance.
The Court: If he takes the stand, there are rules concerning that and we will follow those rules. That was Mr. Borders?
unidentified: Borders.
Mr. Briggs: Thomas Borders.
The Court: Appreciate it.
Mr. Briggs: He was involved in one little incident. Your Honor, you said nine but I thought you said something about --
Mr. Briggs: We are now going to pick six?
The Court: We are going to use six and I don't know whether to pick an alternate or not. If it looks like it's going to go over into tomorrow then I'd like to have an alternate.
Mr. Briggs: I'm sorry, Your Honor. I am not communicating. I thought you said something about question number six for the jury.
The Court: No, I didn't say anything about that.
Mr. Briggs: So this only one we are striking is nine --
[25 to page 21, line 1] **The Court:** Well, unless you object to another one and I [page 21] sustain it. You've only made one objection.

Mr. Briggs: I just want you to emphasize fourteen, Your Honor. I just think it ought to be moved up. That's all. But you are the judge, I'm not. And, Your Honor, there is one other thing. I do request that the witnesses be sequestered so once the jury sees them I would ask they be excused from the courtroom and called when they are going to be a witness.

The Court: I will take that under advisement, Mr. Briggs. I'm not sure how I'm going to do that but I'll certainly think about it.
Mr. Briggs: Judge, that's why you've got the robe on.
The Court: Thank you. Ms. Mangum, do you think under the Victim's Rights Act I can recuse victims? Doesn't it say they have a right to be present at every hearing?
Ms. Mangum: I don't believe it would be proper. If he wants the officers sequestered I'm not sure why but we are fine to do that. **But I think the victims have a right to be here throughout the trial.**

The Court: I'm a little concerned about - **I don't want to violate The Victim's Rights Act.** Ms. Mangum, are you going to need this computer up here?
Ms. Mangum: I am, Your Honor.
The Court: Okay. I was going to stack a bunch of stuff on it. I'll stack it somewhere else. Okay.

[25 to page 22, line 4] ***Ms. Mangum:*** Thank you. Your Honor, I don't know your [page 22] plans in terms of introducing the witnesses, the City's witnesses, to the jury but number nine on our list, Natasha Desrocher, she's on telephone standby. She had a work issue and so she couldn't be here this morning and so she won't be here to be introduced.

The Court: Well, those that are here obviously we like to be viewed. The ones that are not here, use their names.
Ms. Mangum: Okay.
The Court: Does someone have just a one-page copy of the ordinance.
Mr. Briggs: I do somewhere, Your Honor.
The Court: Can you make me one so I don't have to end up --
Ms. Mangum: I've got one.
The Court: Make me a copy of that so as part of my charge I won't have to end up using this fourteen pound code book up here. Do you think that ordinance is an intent ordinance or not, Ms. Mangum?

[18-19] ***Ms. Mangum:*** That's a good question, Your Honor. I haven't thought about it. I should think about.

[20-23] **The Court**: Just think about that because I've got an intent charge and if it's an intent crime I need to charge that paragraph. If it's not, I shouldn't. It doesn't say willfully in the ordinance.

[24-25] ***Ms. Mangum:*** Right. I'm not sure there's any language there that indicates intent.
[page 25, line 1] **(Pause.)** [1] **(Jury venire enters courtroom.)**

[1-3] **The Court**: Is anybody in the jury out there who cannot be with us all day and perhaps part of tomorrow? Okay. I'm aware of your situation. What time do you have to leave tomorrow sir?
[3] ***unidentified:*** I believe ten o'clock in the morning.
[7] **The Court**: Does anybody object if I excuse Mr. Esposito?
[9] ***Ms. Mangum:*** No, Your Honor.
[9-10] **The Court**: Mr. Briggs, do you object if I excuse Mr. Esposito?
[11] **Mr. Briggs**: No, I do not, Your Honor.
[12-16] **The Court**: I've actually excused him for tomorrow and if the case went over I wouldn't want the whole case to fall apart because of that. All right. Sir, thank you for coming today. You are excused. Appreciate it. Anybody else who couldn't stay with us today and may be part of tomorrow? [17] **(No other response.)**

[18-20] **The Court**: All right. I need to ask you a series of questions before we begin jury selection. Ms. Mangum, if you will introduce any potential witnesses?
[21 to page 24, line 2] ***Ms. Mangum:*** Just as a reminder, my name is Jess Mangum. I'm Assistant City Attorney with the City of Columbia. I have several witnesses today. I'm going to read their names and ask them to stand up. Tim Ellis. Sherry Callahan. Officer John Griggs. Officer Tara Shumate. Judge, she's in the other courtroom right now. Kenny Christopher Roberts. Captain Earl Marsh. Freda Hogan. Doug Hogan and Natasha Desrocher who is not with us at the moment.

[2-5] **The Court**: And Mr. Briggs, if you will kindly introduce any potential witnesses, sir.
[5-12] **Mr. Briggs**: My name is Orin Briggs. I'm the attorney for the two defendants that are listed in some of the citations in this case. One is the Apostle Clark who is here and his wife who is referred to as Dr. Clark. They are both ministers in the church that you'll be hearing about and those are the first two witnesses, of course. And then I have Thomas Borders, the gentleman here. And then we might have one other witness but I don't know when he'll get here and we'll make sure - the question is do you all know any?
[13-14] **The Court**: Do you know the name of that other witness, Mr. Briggs?
[14-16] **Mr. Briggs**: Do you know who was going to (inaudible)? Regina McKinney would be his daughter, Your Honor.
[17] **The Court**: Okay.
[18-19] **Mr. Briggs**: So if they don't know him they probably don't know her.
[20 to page 25, line 7] **The Court**: Okay. Regina McKinney. All right, folks. Having been introduced to all those folks and those names, let me ask you the following. Are any of you related by blood or marriage, do you have any social, personal or professional relationship or do you plain just know any of these people in any capacity? If you do, don't blurt it out. If your answer to any of these questions is yes, raise your hand and then we will inquire further as needed. [22] **(No response.)**

[4-5] **The Court**: All right. No hands. Have any of you seen or heard anything about this case, actually cases, in the newspaper or any form of media? [7] **(No response.)**

[8-10] **The Court**: Do any of you hold any bias or prejudice for or against any of the witnesses, parties that you've - or lawyers - that you've just been introduced to? [11] **(No response.)**

[12-13] **The Court**: Do any of you know of any reason why you cannot render a fair and effective verdict to all sides in this case? [14] **(No response.)**

[15-18] **The Court**: All right. Again, these questions if the answer is yes please just raise your hand without saying anything. Is there any member of the jury panel who has ever been issued a noise citation or noise violation warning? [19] **(No response.)**

[20-21] **The Court**: Has any member of the jury panel had a family member or close friend who has been issued such? [22] **(No response.)**
[23-25] **The Court**: Is there any member of the jury panel who has ever been stopped or questioned by the police due to loud noise coming from their home, automobile or place of employment? *[page 26, line 1]* **(No response.)**

[2-3] **The Court**: Have any of you had any family member or close friend in that situation? [4] **(No response.)**

[6-7] **The Court**: Have any of you been arrested for any criminal offense, actually taken into custody and arrested? Give me your name, please, sir.
[8] *Juror:* Vann Mullis.
[9-10] **The Court**: Do you mind sharing with us what the charge was?
[11] *Mr. Mullis:* It was a D.U.I.
[12-13] **The Court**: Okay. And could you tell us about how long ago that was, sir?
[14-15] *Mr. Mullis:* It was the incident occurred in '94 and I was convicted in '95.
[16-17] **The Court**: Okay. Having had that interaction with the police, are you able to give a fair and effective verdict to all sides?
[18] *Mr. Mullis:* Yes, sir.
[19-22] **The Court**: Thank you. I can't ask number four. I know we didn't discuss it earlier but I can't. I don't like number five either. I'm sorry. I apologize but I just think it's irrelevant. Is any member of the jury panel a member of an evangelical apostolic church? [24] **(No response.)**

[23 to page 27, line 1] **The Court**: And is any member of the jury panel a member of Rehoboth United Assemblies Church or any of its sister churches? [3] **(No response.)**

[5-6] **The Court**: Have any of you ever attended services at that church or know anyone who has? [8] **(No response.)**

[10-11] **The Court**: Does any member of the jury panel believe that a preacher or a church does not have to follow the civil laws ordinary citizens have to follow? [13] **(No response.)**

[15-17] **The Court**: Does any member of the jury panel believe that the laws of tenants of Christianity or any other religion replace or supersede man-made laws? [18] **(No response.)**

[19-22] **The Court**: Does any member of the jury panel believe the First Amendment to the Constitution which covers free speech and freedom of religion gives a preacher or a church the right to do and say anything they want without any limits whatsoever? [23] **(No response.)**

[24-25] **The Court**: Does any member of the jury panel believe the government cannot or should not control the noise level of a preacher in the pulpit or church during services? [25] **(No response.)**

[23 to page 28, line 1] **The Court**: Is any member of the jury panel familiar with these events? I've already asked you that. All right. Anybody know of any other reason why you shouldn't serve on this jury here today? *[page 28, line 2]* **(No response.)**

[2-13] **The Court**: Thank you very much. I appreciate your assistance. Now, we are going to call a name. We have an electronic device that picks jurors at random. It says it's at random. We are going to call your name. When we do, if you'll come all the way down to this rail, face back out and I'm facing the audience, give us your name, address, occupation and if you are married please your spouse's occupation. Stay here. The rule is the prosecution goes first. If the prosecution seats you, then I'll go to the defense. If they seat you then please come around and have a seat. If either one says I'm going to strike you then please return to your seat in the audience. I need my clerk to pick the jury.
[14] **Mr. Briggs:** What's the strikes again?
[15] **The Court**: Six each.
[16] **Mr. Briggs:** Six each?
[17] **The Court**: Yes, sir.
[18] ***Ms. Mangum:*** I believe we are waiting on the strike list.
[19-21] **The Court**: Okay. Up until recently we had a bingo popper which was really sort of on the trailing edge of technology but it never broke down.
[22] *Court Clerk:* Willie Watkins.
[23-24] *Mr. Watkins:* Willie Watkins. 1308 Hendrix street. I'm a retired federal employee.
[23 to page 29, line 1] **The Court**: Okay. Thank you, sir. Hold on one second. *[page 29]* What says the City?
[2] [redacted]
[3] **The Court**: You may return to your seat, sir.
[4] *Court Clerk:* Keith Terry.
[5] *Mr. Terry:* Keith Terry. 6720 Frost Avenue. Manager.
[6] **The Court**: Yes, ma'am.
[redacted]
[11] **The Court**: What does the defense say?
[12] **Mr. Briggs:** Seat him, Your Honor.
[13-15] **The Court**: Some around and have a seat in the jury box for me please.
[22] *Court Clerk:* Debra Tedeschi.

[11-14] ***Ms. Tedeschi:*** My name is Debra Tedeschi, 408 Chimney Hill Road. I'm married to David Tedeschi who is a professor at U.S.C.
[15] **The Court:** What do you do for a living, ma'am?
[16] ***Ms. Tedeschi:*** I'm an attorney.
[17] **The Court:** Okay. What says the City?
[18] ***Ms. Mangum:*** Your Honor, please seat this juror.
[19] **The Court:** What says the defense?
[20] **Mr. Briggs:** I missed her name, Your Honor.
[21] **The Court:** A Ms. Tedeschi.
[22] **Mr. Briggs:** I want to strike her.
[23] **The Court:** Okay. Ma'am, thank you. You are excused.
[24] ***Court Clerk:*** Ronald Perry.
[25 to page 30, line 1] ***Mr. Perry:*** Ronald Perry. 137 Bellefond Ridge Road. [page 30] Security officer.
[2] **The Court:** What says the City?
[redacted]
[4] **The Court:** You may return to your seat, sir.
[5] ***Court Clerk:*** Joel Wooten.
[6-7] ***Mr. Wooten:*** Joel Wooten. 1721 W. Buchanan. I'm a professor and my wife is a (inaudible) teacher.
[8] **The Court:** What says the City?
[9] ***Ms. Mangum:*** Please seat this juror.
[10] **The Court:** What says the defense?
[11] **Mr. Briggs:** I want to strike him.
[12] **The Court:** You may return to your seat, sir.
[13] ***Court Clerk:*** Wendy Beaston.
[14-15] ***Ms. Beaston:*** Wendy Beaston. 418 Oakbrook Village Road. I'm a club manager at Direct Buy.
[16] **The Court:** What says the City?
[17] ***Ms. Mangum:*** Please seat this juror.
[18] **The Court:** What says the defense?
[19] **Mr. Briggs:** I'm going to strike her, Your Honor.
[20] **The Court:** You may return to your seat, ma'am.
[21] ***Court Clerk:*** Christian Crews,
[22-23] ***Ms. Crews:*** Christian Crews. 148 Peach Grove Circle. I'm currently for Goodwill Industries.
[24] **The Court:** What says the City?
[redacted]
[page 31, line 1] **The Court:** You may return to your seat, sir.
[2] ***Court Clerk:*** Jeffrey Cox.
[3-5] ***Mr. Cox:*** Jeffrey Cox. 8 Hampton Springs Court. I'm project manager for (inaudible) North America. My wife is unemployed. She's a home schooler. Teaches our kids.
[6] **The Court:** What says the City?
[redacted]
[8] **The Court:** What says the defense?
[9] **Mr. Briggs:** We'll seat him.
[10] **The Court:** Come around, please, sir.
[11] ***Court Clerk:*** Janice Martin.
[12-13] ***Ms. Martin:*** I live at 1107 Bentley Court. Data entry operator.
[14] **The Court:** What says the City?
[redacted]
[16] **The Court:** What says the defense?
[17] **Mr. Briggs:** Seat her.
[18] **The Court:** Come around, please, ma'am.
[19] ***Court Clerk:*** Earlene O'Neal.
[20] **Mr. Briggs:** Is she one added to the list at the bottom?
[21] ***Court Clerk:*** No, she's number eleven.
[22-23] ***Ms. O'Neal:*** Earlene O'Neal. 3810 Persimmon Street. I'm a (inaudible) clerk at Wal-Mart.
[24] **The Court:** Thank you. What says the City?
[redacted]
[page 32, line 1] **The Court:** What says the defense?
[2] **Mr. Briggs:** Excuse her, please.
[3] **The Court:** Return to your seat, ma'am.
[4] ***Court Clerk:*** Benjamin Redden,
[5-6] ***Mr. Redden:*** Benjamin Redden. 324 Northwood Street. Parts manager and my wife is a customer service rep.
[7] **The Court:** What says the City?

[redacted]
The Court: What says the defense?
Mr. Briggs: Did he say - what job do you have?
Mr. Reddies: Parts manager.
Mr. Briggs: Let's seat him.
The Court: Come around, please.
Court Clerk: Scott Johnson.
Mr. Johnson: Scott Johnson. 804 Betsy drive. Project manager for Energy Solutions and I'm single.
The Court: What says the City?
[redacted]
The Court: What says the defense?
Mr. Briggs: Strike him.
The Court: Please return to your seat, sir.
Court Clerk: Donna quick.
Ms. Quick: Donna quick. 1404 Columbia College Drive. I work in Financial Aid.
The Court: What says the City?
[redacted]
The Court: What says the defense?
Mr. Briggs: I'm going to excuse her.
The Court: You may return to your seat, ma'am.
Court Clerk: Amanda Furstenberg.
Ms. Furstenberg: Amanda Furstenberg. 1109 Price Avenue and I work in sales at a property management firm.
The Court: What says the City?
[redacted]
The Court: What says the defense?
Mr. Briggs: Next her.
Court Clerk: Shirley Brennen.
Ms. Brennen: Shirley Brennen. 901 Colleton Street. I work at Palmetto Health Richland as the hostess.
The Court: What says the City?
[redacted]
The Court: You may return to your seat, ma'am.
Court Clerk: Tracy Gallman
Ms. Baughman: Tracy Gallman. 4504 Maurice Street. I work with Medicare provider enrollment and my husband is self-employed in construction.
The Court: What says the City?
[redacted]
The Court: What says the defense?
Mr. Briggs: Next her.
(page 14, lines 1-4) The Court: You may come around, please, ma'am. Let's do pick an alternate because we might go into tomorrow and things can always happen overnight. You each have two strikes on the alternate.
Court Clerk: Karin Haile.
Ms. Haile: Karin Haile. 11 Tombee Place. I'm an accountant and I'm married to a business manager.
The Court: What says the City?
[redacted]
The Court: What says the defense?
Mr. Briggs: Strike her.
The Court: You may return to your seat, ma'am.
Court Clerk: Brittany Rogers.
The Court: Okay. Go to the next one.
Court Clerk: Eugene Glover.
Mr. Glover: Eugene Glover; 511 Alcott Drive. Employed at Richland Memorial Hospital (inaudible).
The Court: What says the City?
[redacted]
The Court: Return to your seat, sir.
Court Clerk: Julie Lybrand.
Ms. Lybrand: Julie Lybrand. 4511 Landgrave Road. I'm a research analyst for the South Carolina legislature and my husband is an attorney.
The Court: What says the City?
[redacted]
Mr. Briggs: Strike her.
The Court: You may return to your seat, ma'am.
Court Clerk: George Linder.

[2-7] *Mr. Linder:* I'm George Linder. My wife is Sarah Linder. I'm a tax auditor consultant and my wife is retired. Live at 2910 Heyward Street.
[8] The Court: What says the City?
[redacted]
[10] The Court: What says the defense?
[11] [redacted] Okay.
[12-16] The Court: Sir, you may come around. Got you a little jump seat over here on the side. All right. Any challenge to the makeup of the jury to be decided?
[18] *Ms. Mangum:* No, Your Honor.
[16-17] The Court: Mr. Briggs, any challenge to the makeup of the jury?
[18] [redacted] No, Your Honor.
[19] The Court: Okay. [20] (Balance of jury venire is excused.)
[redacted]
[21-23] The Court: You either have to make the motion or not and you need to make the motion before my jury panel leaves because it's impossible for me to replace them.
[page 34, lines 1] [redacted]
[2] The Court: Okay.
[3] Mr. Briggs: I wasn't going to suggest a change.
[5-13] The Court: [6-13] Okay. I am going to ask Mr. Terry to serve as the foreperson and you will always occupy that front seat there. The rest of you can move around if you wish. I'd ask you to sit here, please. Now we are going to get to the case in a minute and we are going to hear the testimony but I kind of want to set you up a little bit. This is a criminal case. It involves the City of Columbia's noise ordinance and it involves two defendants being charged with violation of that ordinance. I will read you that ordinance at the end of the case. In fact, does anybody object to my reading the ordinance now and again at the end of the case?
[14] Mr. Briggs: I would prefer it, Your Honor.
[15] *Ms. Mangum:* I do not.
[16 to page 42, line 13] The Court: [16-33] I thought about this yesterday when I was sitting at home getting ready for this I said I would like to know what standard I'm looking for while I'm looking. So I'm going to read it now and I'll read again once or twice at the end of the case. **It shall be unlawful for any person to operate, *or cause or permit to be operated*, any instrument or sound-producing or sound-amplifying device so loudly as to unreasonably disturb persons in the vicinity thereof or in such a manner as renders the instrument or device a public nuisance.** So that's the Ordinance you'll be applying to the facts in this case. *[page 37, lines 1-14]* A couple of quick things. As a criminal case, as the two defendants, Mr. And Mrs. Clark, sit here today they are presumed to be innocent. And the only time that presumption of innocence can ever be taken away from them is if the prosecution proves to you beyond a reasonable doubt that they are guilty. Other than that they stay presumed innocent. The burden of proof is always on the prosecution. The prosecution has to prove guilt beyond a reasonable doubt. There are multiple counts and I'll tell you this at the end. You could find them guilty on some and not guilty on some, guilty on all, not guilty on all because they are each a count individually and that's why I told you it might be a good idea for note taking because you'll have to be able to keep these incidents straight because there's more than one incident involved here today. *[15 to page 38, line 9]* I'll give you a definition of reasonable doubt at the end of the case. You don't need to know that now but I will help you a little bit on the definition of that at the end. You and I have completely different roles in this case. My role is to rule on the law, on motions and objections, to let in the good evidence, to keep out the bad evidence. Your role is to take that evidence and determine what really happened, what the real facts are, what the import of those facts are. So you are factually oriented and I'm legally oriented. I'm going to ask you for a favor. If I tell you this is the law, please accept it. If I tell you that a piece of evidence is not admissible after you have heard it if someone objects and I say [page 38] sustained, do not consider that evidence. Wipe it out of your mind and don't let it influence you one bit at all. We are not going to question your judgment in this so please don't be questioning the legal aspect of it. **This thing only works if we both do our part and we do it right. Okay? If anybody tries to fiddle with it, it really does go off the rails on appeal so let's stick with it that way. You are the judges of the facts and I'm the judge of the law.** And again we respect your judgment and ask you to respect mine if you would, please. *[38 to page 39, line 9]* During the course of the trial, it's likely that the attorneys will make motions or objections. Do not hold that against them. They are not trying to hide anything. They are just trying to make sure that the rules are followed. Some people think I'm a referee but I'm a referee without a whistle. So mainly the object or motion they are simply blowing the whistle saying, judge, something either just happened or is about to happen and we need a ruling on it. We need the referee to tell us whether it was or wasn't a foul. So that's all they are doing is calling my attention to something so that I can make that ruling. It's their job, they are supposed to do it. It works best when good evidence comes in and the bad evidence stays out. I know y'all may think as non-lawyers all evidence is good. Again, this is a finely tuned system over the last five hundred years. It's not something we wrote up yesterday and wrote down to try to fool jurors or hide things from you.

The system is a coherent code and that's how it works. If I during any [page 39] time of this trial say anything, do anything, use a glance or tone of voice or anything that you think is trying to give you a hint that I favor one side or don't favor one side, please get that out of your mind. What I think about the facts of the case frankly just does not matter because you are the judges of the facts. I am not. I'm not going to try to do anything like that but if you interpret that I have forget it. You do your own facts, don't let me try to influence you on the facts in any way whatsoever because that's not proper. It's not what I'm supposed to be doing. [39 to page 40, line 4] Now this is a little hard to do. I tell people to do this and then it's almost impossible but I'm going to ask you anyhow. Do not consider the evidence in the case until the whole trial is over and you've heard all the evidence, all the charge on the law, all the arguments by the lawyers. Don't do it amongst yourselves and don't even do it in your own individual mind. You are not supposed to consider the weight or the effect of evidence until you know everything. And my best example - my mom did this - I was telling my mom about this one day. She said that makes perfect sense. I said what do you mean. She said, well, if you are baking a cake you put one ingredient in a bowl and you taste it and it taste like one thing; you put two ingredients in a bowl and it taste different. You ain't gonna know what that cake taste like until you get it out of the oven and let it cool off and put the icing on it. Then you know what the cake taste like. So y'all need to wait until the cake is baked, wait until it's cooled off, put the icing on and you can eat the whole [page 40] thing, but until keep your fingers out the bowl. Okay. And you'll be better off. Unfortunately we do not allow jurors to ask questions during the trial. While you are deliberating if you have a question you can send me a note out but you're not allowed to ask questions. [L-12] There may be a question you are just dying to ask (inaudible) but you can't do it. I'm sorry it's not allowed. If I had my choice, I'd let you do it but that's the rule. [L-13] Please pay close attention to the attorneys. They are going to give you their version of the case and then you are going to determine guilt or innocence at the end of all this. It's a big duty but I know you can do it and I appreciate you being here to do it. I'm going to be quiet and turn it over to the actual people that matter. Yes, ma'am.

[14 to page 41, line 16] **Ms. Mangum**: Thank you, Your Honor. Good morning. On a spring day in 2009 Tim Ellis, who I introduced you to earlier, bought his dream home in a brand-new neighborhood in the heart of downtown Columbia. It was a home that he dreamed of sharing with his long-time partner, Sherry Callahan. It was a home that he dreamed of raising his family in. It was a home where he dreamed of celebrating birthdays and anniversaries and holidays. And then before his very eyes those dreams turned into a nightmare because Tim Ellis and Sherry Callahan cannot celebrate birthdays or holidays or anniversaries in their home. On some days they can't even watch TV. They can't read stories to their son. They can't sit down and have dinners as a family. And sometimes even when they [page 41] are exhausted they can't go to sleep. Why? Because of these defendants. Because these defendants have refused to follow the law. Because these defendants have placed themselves above the law. Over and over and over again these defendants have blared loud and disturbing music directly into these victims' home. [redacted]

Why did the victims' dream home turn into a nightmare? Because they live next to a church that is operated by these defendants. And over the last year and a half these defendants have repeatedly violated the City's noise ordinance. And so for these victims their nightmare continues. For that reason today after you hear all the evidence we are going to ask that you help these victims end their nightmare. I'm going to ask that you find these defendants guilty on all charges. Thank you.

[17 to page 43, line 24] **Mr. Bizzell**: [17 to page 42, line 1] Ladies and gentlemen of the jury, I want to make sure you hear more truth than what you've heard so far. I'll get to that point in a minute but I'm a Columbia native so I've been here a long time, served in the Army, worked in government, have enjoyed my legal career for almost forty odd years. And I enjoy what we are doing today because we can have a trial with the judge, what we call a bench trial, but we can't have a jury trial without you folks. And it's one of the keystones of our judicial system and you are serving a worthy purpose. And as the judge told you, you are [page 42] the only people who can decide the facts in this case. [L-1] Now these two defendants are just as innocent as I am of this situation. They are just as innocent as the City Attorney is. They are just as innocent as the judge is until the City proves their guilt under a valid ordinance by - without reasonable doubt. In other words, there has to be no doubt in your mind that they are guilty. The judge will explain that to you. I'm not going to try to explain what that is. [L-10] One of the things I think you need to remember is two things. First of all, you can believe some of the testimony of a witness, you can believe none of their testimony or you can believe all their testimony. And the other major point of jury trials is you all, the six of you, have to all vote the same way eventually. And if you don't, if you end up four to two, it's what we call a hung jury. [L-21] You've heard of that. And if you don't change your mind, there might be a second trial. But the point I'm making here is you, every one of you, has the right and the obligation to make up your mind based upon the facts you heard and

the testimony you heard in court, not what somebody whispered to you, not what you speculated what if and what if. You are bound by what you hear in the courtroom. [22 to page 43, line 22] Now I'm not going to make a big deal out of this but the City Attorney said that my folks were - had the music loud, the preaching, all times of the day and all times of the night. I'm not going to tell you what that is but it's not true. And you are going [page 43] to hear from the pastor of the number of hours. And I can tell you without figuring it out myself their church services is probably less than five percent of the total time in a year. So we are not talking about late at night, we are not talking about early in the morning. We are talking about regular church hours and they have a simple amplification system of the speaker and a soloist and you'll hear that in the testimony. Now the other thing you need to know and keep in mind is that the City Attorney said that Mr. Ellis moved in there in 2009. What you are going to find out is he lived there for four years before Sherry Callahan came on board. No complaints the first year, no complaints the second year, no complaints the third year, no complaints the fourth year. But when Sherry Callahan came into that home they started having complaints almost every service. And you need to remember that the church was there before Mr. Callahan bought his home. He will probably explain exactly where it is and that's fine. It happens to be on Laurel Street. You've seen the church there if you go downtown and that house is the one next to it and all, but you are going to find out there are some facts that are different from what the City Attorney told you. [20 to 21] We will present our case. Afterwards the judge will let both of us argue again and he'll give you instructions and then he'll tell you decide based upon the facts whether or not you think these two defendants are guilty. I thank you for your time.

[23 to page 44, line 3] The Court: Yes, ma'am. I apologize. There's one matter [page 44] of law that we really didn't hash out and I need to ask y'all to step back for just a minute while we do that and then we'll start the witnesses. Do not discuss the case while you are back there. [6] (Jury leaves the jury box.)

[7-9] The Court: We talked about sequestration, Mr. Briggs, but we never did really make a decision on who was going to do what. Who do you want sequestered?
[10-11] Mr. Briggs: I want everybody sequestered, Your Honor, including, quote, the victims.

[12-17] The Court: Okay. I am going to make a decision to leave the victims here and you can keep your chief investigating officer and obviously your first witness if that's someone different but any other officers I'm going to ask you to sequester them.
[18] Ms. Mangum: Yes, Your Honor.
[19-23] Mr. Briggs: And, Your Honor, for the record I object to the complaining witnesses staying in but I will also note that - and I know you would - it's appropriate for anybody who has testified they can stay in the courtroom.

[24-25] The Court: Sure. And earlier I said my decision to leave the so called victims in was based on the Victim's Rights Act. You know, this is probably not a victim crime under the Victim Rights Act so I'm just making a judgment that they can stay in on my discretion without the rights of the Victims Rights Act.
[24-25] Ms. Mangum: Your Honor, your sequestration applies to his witnesses?
[page 45, line 1] The Court: Yes, yes. Certainly.
[2-3] Mr. Briggs: Thomas, you have to leave. The others are just friends.

[4-16] The Court: I'm sure we are going to have more than one break in this case but we also briefly discussed whether this was an intent crime or not and whether I should charge intent. I know it's a long way down the line but while we've got the jury out. Is it a general intent crime? Let me read you the intent charge and if y'all think it's applicable or not. **To constitute the crime charged there must be a joint operation of two essential elements, an act forbidden by law and an intent to do the act. Before a defendant may be found guilty of a crime. The prosecution must establish beyond a reasonable doubt that under the ordinance described in these instructions the defendant was forbidden to do the act charged and that he intentionally committed the act.** Should I charge that or not?

[17-22] Mr. Briggs: Your Honor, I would respond that the wording that we've talked about before casts directly is an intentional act and I'm not arguing that it has to be the kind that we talked about in the other case. I'm not arguing that. But in other words they have to knowingly put their noise out of their building.
[22] The Court: The ordinance doesn't say willfully.
[23] Mr. Briggs: Sir?
[23] The Court: The ordinance does not say willfully.
[page 45, line 1] Mr. Briggs: I understand.
[2-3] The Court: But it could still be a general intent crime without the word willfully being used.
[5] Mr. Briggs: That's all I've got to argue.

Ms. Mangum: And, Your Honor, the language that he's relying on isn't a part of the statute that's even in question.
The Court: So do you think I should charge it or not?
Ms. Mangum: I don't think that because there's no willingly or knowingly, I don't think the intent is necessary but I'll say I will leave it at your discretion.
The Court: Mr. Briggs, do you want me to charge intent or not?
Mr. Briggs: I want you to charge it.
The Court: Okay. I'll charge it. Okay. Anything else while we've got them out? All right. Let's proceed.
(Jury returns to the jury box.)
The Court: Thank you very much, ladies and gentlemen. Appreciate it. Yes, ma'am.
Ms. Mangum: Your Honor, the City calls Tim Ellis.
Timothy Douglas Ellis, after being duly sworn by the court, testifies as follows:
The Court: And in need to swear in the jury. (Jury is duly sworn by the court.)
Direct examination by Ms. Mangum:
(page 47, line 1) *Q:* Mr. Ellis, could you state your full name, please?
A: Timothy Douglas Ellis.
Q: And where do you currently live?
A: 615 Laurel Street, Columbia, South Carolina.
Q: Is that within the city limits of Columbia?
A: Yes, ma'am.
Q: What neighborhood is that?
A: It's The Battery, Arsenal Hill.
Q: And is that a fairly new neighborhood?
A: It is.
Q: Do you know when it was built?
A: I think my home was one of the first structures built in there, probably started about 2006, 2007.
Q: And what year did you purchase your home?
A: Spring of 2009.
Q: What was your understanding when you originally purchased the home about the neighborhood?
A: It was a beautiful neighborhood. I wanted to live downtown close to the vista and it was just a beautiful area and a beautiful home. I mean I knew when I saw it, I said this - and my real estate agent had showed me homes all over downtown and when I saw that one I just knew when I walked in, I said this is it, this is what I want.
Q: Did the realtor provide you --
(24 to page 48, line 1) Mr. Briggs: Your Honor, I don't want to cause a problem but could he - I don't want him to miss the jury or her but could he *(page 48)* turn just like a quarter so I can hear him a little bit better.
The Court: Speak up just a little for us. We appreciate it.
A: Yes, sir.
Q: (by Ms. Mangum) Did the realtor give you any information about the neighborhood?
Mr. Briggs: Hearsay, Your Honor.
Ms. Mangum: I didn't ask what the realtor said, Your Honor.
The Court: You know, I know at the beginning of any witness we have a little background but it's really not particularly relevant I don't think to the events that either did or didn't occur on these occasions so let's try to keep the background to a minimum please. We have lots to get to on the meat of the matter.
Ms. Mangum: Yes, Your Honor.
Q: (by Ms. Mangum) Before you bought your home, were you aware that there was a church next door?
A: I was.
Q: Did that impact your decision to buy the home?
A: No, I frankly considered it kind of a bonus. I'm thinking: I'm gonna be living next to a church, it's going to be relatively quiet, good neighbors. I saw nothing negative about that whatsoever but I obviously was very wrong.
Q: When you originally purchased your home, was that your primary residence?
(page 49, line 1) A: Yes, it was. Or it is.
Q: And did anyone else live with you in that home at the time you purchased it?
A: No.
Q: for the first several years when you weren't working, where did you spend most of your time?
A: When I wasn't working, oh, I was at Sherry's house and over at her home.

Q: And so when did you start living in that house full time?
A: It would have been like 2011, early '12 is when I started spending the majority of my time at the home.
Q: At the house on Laurel Street?
A: Laurel Street, yes.
Q: Do you recognize this picture?
A: I do.
Q: What is that a picture of?
A: That's the church on the left, it's my home on the right.
Mr. Briggs: No objection, Your Honor.
Ms. Mangum: Your Honor, at this time we would move to put this in evidence and publish it to the jury.
The Court: Entered without objection. **(Photograph received into evidence as City's Exhibit #1.)**

Q: *(by Ms. Mangum)* This picture you would say fairly and accurately represents your home and the church at this moment?
A: Absolutely.
[page 50, lines 1-3] **Q:** You said that initially you were glad that the church was your neighbor. What caused those feelings to change?
A: Well, just sleepless nights, inability to enjoy the sanctity of my home, inability to celebrate a simple Thanksgiving morning watching the Macy's day parade. Evening upon evening of loud drumming and noise through amplification that would not allow us to have dinner. There's numerous times we don't even get to have dinner. We certainly can't utilize our patio. I like to grill out a lot. It's just - it's been horrible.

Q: And you mentioned your patio. Is this a picture of that area?
A: It is.
Ms. Mangum: Mr. Briggs.
Mr. Briggs: Is this his back porch?
Ms. Mangum: That's the patio. Do you have any objection to this?
Mr. Briggs: No.
Ms. Mangum: Your Honor, at this time we would move to enter this into evidence and publish it to the jury.
The Court: Admitted without objection. **(Photograph received into evidence as City's Exhibit #2.)**

Q: *(by Ms. Mangum)* So because of the noise, the loud and excessive noise that comes from the church --
Mr. Briggs: Your Honor, I am going to object.
The Court: Sustained.
Mr. Briggs: Counsel is repeating what he's already said.
[page 51, line 1] **The Court:** Sustained.
Q: *(by Ms. Mangum)* Have you been able to use that porch?
A: Not as often as I would like.
Q: And why are you not able to use that porch?
A: You can't hear yourself think out there. The noise is so loud and incredibly disturbing.
Q: We are here today based on seven separate noise violations and I'd like to just go through them one by one.
A: Sure.

[redacted]

A: I do.
Q: Can you tell us a little bit what happened prior to your contacting the police department?
A: That evening?
Q: Yes.
A: I just - the services start at - usually don't even begin 'til 8:00 p.m. and the noise is just to the point it was unbearable and we were forced to call the Columbia Police Department to come out and try to resolve the matter.
Q: What day of the week was that, the 27th? Do you recall?
A: I don't recall.
Q: If I told you it was a Wednesday, would that sound right?
A: Yes.
Q: And at what time did this take place?
[page 52, lines 1-3] **A:** That it began? Around 8:00 p.m. that's typically when they'll start on weeknights.
Q: How long did the noise last until?
A: Certainly at least 'til 10:00 p.m.

[1] *Q:* Was it continual noise? Can you describe what you heard?
[2-5] A: No. There's times when it's quieter. It's just up and down. It can be loud preaching, it can be endless drumming. The drumming is just driving me insane. Organs. The amplification and drums, I hear it in my sleep.

[10-11] *Q:* What activities are difficult for you to do at your house because of the noise?

[12-19] A: Basically just live my life because we never know when they are going to show up. They have been there on every single weeknight and weekend (inaudible). They go for weeks straight Monday through Sunday at times several weeks a year. You know, basically our life has turned into around 7:30 in the evening on a weekday we start looking out the blinds to see if anybody is going to show up. [redacted]

[20-21] *Q:* Are you aware of any schedule that the church keeps in terms of services?
[22-24] A: No. They have one posted but it's -- they do not go by that schedule at all. It's all over the board. They can be there Monday through Sunday.
[25] *Q:* Is this the schedule that you just referenced?
[page 53, lines 1-3] A: It is. And interesting enough it says that their Sunday morning worship begins at 11:00 am. Mr. Clark doesn't even pull up sometimes 'til 11:30 and service begins around noon.
[1] Mr. Briggs: Your Honor, I think that's irrelevant.
[3] The Court: Overruled.
[5] *Ms. Mangum:* Do you have any objection to this?
[7] Mr. Briggs: Yes.
[9] The Court: What would be your objection, sir?
[9-11] Mr. Briggs: Your Honor, it's outdated. It is not a true statement of the services they have and Mr. Ellis has got to know it's not a true statement of the standard services.
[12-14] The Court: I'll let it be entered just to show they have a schedule, not that they follow it, just that they have one, that one exists.
[15] *Ms. Mangum:* Thank you, Your Honor. [16] (Schedule received into evidence as City's Exhibit #3.)
[17-18] *Ms. Mangum:* Your Honor, permission to publish to the jury.
[19] The Court: Yes, ma'am.
[20-23] *Q: (by Ms. Mangum)* Let's backtrack for a minute. In terms of the schedule that is out in front of the church, was it your testimony that they do not follow that?
[23 to page 54, line 4] A: No. Their schedule is completely inconsistent week to week except on Sundays they typically do begin around noon. What they do before that I don't know and don't care because it's quiet. But as [page 54] far as the noise goes, which I assume is their service, begins typically at twelve. Outside of that there is no consistency whatsoever. They may be there Tuesday, Wednesday, they may be there none during the week, they may be there Wednesday night. We have no idea.

[1-5] *Q:* Was this the same sign that was posted when you purchased your home?
[7-8] A: I think so. I don't think there's been any changes to it that I'm aware of.
[9-11] *Q:* What changes have you made to your home based on the noise that comes from that church? What problems that you've had associated with the noise from that church.
[12] Mr. Briggs: That's leading, Your Honor.
[13] The Court: Overruled.
[14-17] A: Just our inability to enjoy our home. I mean I don't think I should be forced to put soundproofing products in my home. My home was built - it's fairly new. It was built to code so we just have to endure the church's noise.

[18-19] *Q:* Have you planted some shrubbery to separate your property from the defendant's?
[20-21] A: The developer did put some shrubbery in, yes. That was to finish - I assume you are talking about the holly bushes.

[22] *Q:* Let me show you this picture. Do you know what this is?
[23-25] A: Yes. That was put in to finish the neighborhood as the developer is finally closing out and soon to turn over the property to the homeowners association.
[page 55, lines 1-2] *Q:* And does this picture reflect the way the property has looked for the last year and a half?
[3] A: Oh, yes.
[4-6] Mr. Briggs: Your Honor, I am going to object because these peach trees are not on his property. They are on state property but that's my objection.
[7] The Court: Okay. Overruled.
[8-9] *Ms. Mangum:* Your Honor, we would move to put this into evidence and publish to the jury.
[10] The Court: It's admitted. [11] (Photograph received into evidence as City's exhibit #4.)

(by Ms. Mangum) How do those bushes offer you some protection from the church?
A: Well, early before those were installed the church parishioners, some of them would park in my front yard, literally three feet from my front porch which is my property by the way.

Q: Yes, sir. Does this assist at all in blocking noise for you?
A: No, it doesn't.
Q: The second violation -- we talked about the February 27th violation which we discussed already. The following day, February 28th, 2013, did you call the police that evening?
A: We did.
Q: And can you explain why you did that?
(24 to page 56, line 2) **A:** Once again it was just non-stop loud amplification and pounding of drums and it coming into my home and I can hear it on my couch. *(page 56)* It's just - I don't know. I can't explain the difficulty it brings to our life.

Q: Do you remember approximately what time it was that that incident took place?
A: It would have been probably in the seven to eight o'clock range.
Q: How long did that incident last?
A: Once again their services early on would go as late as 11:00 p.m. that night I don't recall exactly what time it may have ended. I'm sure it's recorded in the citation.
Q: On March 10th, 2013, did you again call the police?
A: We did.
Q: And can you explain what that call was in reference to?
A: Same thing. Loud screaming through a microphone, drumming and just basically another night of no rest and no sleep and high stress.
Q: Did you have - were you aware of any members of the church on that particular day that made their presence known to you specifically?
Ms. Mangum: Leading, Your Honor.
The Court: Overruled.

[redacted]

(25 to page 57, line 1) **Q:** *(by Ms. Mangum)* And then on April 19th, 2013, did you call the police again that night?
A: We did.
Q: And why did you call the police?
A: Once again, same thing. It's always the same thing. It's loud, amplified voice screaming, preaching, drums, organ.
Q: Was it disturbing the quiet enjoyment of the home that night?
A: Absolutely. It's been the case for many, many nights.
Q: Moving forward to October 4th, 2013, did you call the police that night as well?
A: We did.
Q: And why did you do that?
A: [redacted]

Q: And without belaboring the point, did you also call the police on November 21st, 2013?
A: We did.
Q: For similar reasons?
A: Absolutely.
Q: And again on April 4th, 2014, for similar reasons?
A: Yes.
Q: In terms of the location of the church, do you have any problem with the message that the church has?
A: Absolutely not.
(page 58, lines 1-3) **Q:** Do you have any problem with the members, individual religious beliefs?
A: None whatsoever.
Q: So why did you call the police on those nights in question?
A: Because --
Mr. Briggs: Asked and answered, Your Honor.

A: Their service --
The Court: Yeah. Sustained.
Ms. Mangum: That's all the questions I have, Your Honor.
Cross examination by Mr. Briggs:
[redacted]
A: [redacted]
Ms. Mangum: Your Honor, objection.
The Court: It's already been answered. Overruled.
Q: (by Mr. Briggs) And you actually owned the home approximately four years before you and Ms. Callahan moved - correct me if I'm wrong - from her home to this home, is that correct?
A: I don't think it was four years.
Q: You said you moved in in 2009?
A: Right.
Q: And you answered her question that you moved into the home - you bought it in 2009, you moved in the home in 2011 or twelve?
(Pg 9, lines 1) A: Eleven would be three.
Q: That's four years.
A: Okay.
Q: Actually, let's see. That's three years.
A: I thought so.
Q: How much distance is there between your property line and the church building, Mr. Ellis?
A: Property line?
Q: Yes.
A: I think it's as low as two feet.
Q: One or two feet there?
A: Yes, the property line. Not house.
Q: Is that line of small shrubbery, is that where the line is; or do you know?
A: I think it is.
Q: Do you have any idea why there was so little room between those two pieces of property?
A: I guess you'd have to ask the people that drew up the plats.
Q: Now let's go back to the property - let's explain something. The front of your house is a way from the street, isn't it, where you park your cars?
A: No, sir.
Q: You consider the front of your house out on Laurel Street?
A: Yes, that's where my mailbox is. That's where my front porch is.
(page 10, lines 1-3) Q: Do you know where your property line ends and the state line begins there?
Ms. Mangum: Your Honor, objection.
The Court: I don't think it's relevant. Sustained.
Mr. Briggs: He claimed he owned it.
The Court: Sir?
Mr. Briggs: He claimed he owned that land.
The Court: That's not really relevant to the case. We here about a noise ordinance, not property ownership.
Mr. Briggs: Okay.
Q: (by Mr. Briggs) Mr. Ellis, did you ever have any noise - I'm not talking about the level now - do you ever hear any noise from the park there at Finlay Park when they have a rock concert?
A: Not in my home, no.
Q: Most of the incident reports and the report of noise refers to your living room. Where is your living room in the house with respect to the street and back where you park your cars?
A: It's to the back side of my home.
Q: First room you go in the living room?
A: If you enter from the back.
Q: You've got a porch there, you enter a door and you're in the living room?
A: Correct.
Q: Okay. Have you ever taken any decibel readings in any other rooms of your house?

(page 61, line 1) A: I haven't taken any personally.
Q: How many rooms do you have in your house? It's two-story, right?
A: It is.
Q: How many rooms do you have in your house?
A: Let's see. You want to count bathrooms?
Q: No.
A: Living areas?
Q: The rooms you live in.
A: It's a three bedroom upstairs. Downstairs has a dining room, a kitchen, a smaller dining area and a living room.
Q: So you have six and a half or at least six rooms?
A: Yes.
Q: I don't want to put words in your mouth but you said you didn't do any markings in these other rooms. Do you know what I mean, the inside levels? Say the top system on the front of the house?
A: There were readings taken. I didn't take them personally.
Q: All right. That's an answer. Just one other area I think, particularly on the day of 2-27-13 you described a great deal of noise or something of that effect. Let me just find it and refer to you what Officer Griggs says and we'll ask him when he comes up.
Ms. Mansum: Your Honor, I have to object.
The Court: What are you intending to do, Mr. Briggs?
(21 to page 62, line 1) Mr. Briggs: I'm gonna ask him how his description differs *(page 62)* from Officer Griggs who said there was thirty-five minutes of noise.
The Court: At this point, Officer Griggs hasn't testified so there's nothing to compare it to.
Mr. Briggs: Then I reserve the right to call him back then after Griggs does.
Q: (by Mr. Briggs) Now I don't think we've settled where your property line is.
Mr. Briggs: Did you rule that's irrelevant, Your Honor?
The Court: Well, you asked him a little bit. I don't think it's relevant, Mr. Briggs. I just don't.
Mr. Briggs: All right. Let me tell you why I'm asking the question.
The Court: Okay. Yes, sir, tell me why, please.
Mr. Briggs: The sidewalk is a sidewalk, driveway, which is four years all the way over in front of the house before he moved there. They still use, that portion of driveway. It's my understanding that the county driveway is on state property.
The Court: And how is that relevant to noise?
[redacted]
The Court: Thank you.
(22 to page 63, line 5) Q: (by Mr. Briggs) Let me give you a chance to correct something if it needs to be corrected. In some of these, quote, incident reports and in some of these citations it indicates that Ms. Callahan made the call to the police. Do you actually know who made the call on *(page 63)* those instances that you talked to City Council about? She said you and you said yes. Or do you consider that it doesn't matter who calls?
A: Frankly I don't think it matters; but Sherry would have made the call.
Q: Sherry would have made most of the calls?
A: Yes. Our decision was made jointly to make the call.
Q: My wife does things for me. I don't do any business stuff at home. She does all the TV and all that stuff so I understand. I'm not arguing with you, okay? But there is some times when she made the calls?
A: Sure.
Q: All right. Okay, I have a motion decision and I know you heard it but I'm just gonna put it in the record that I had [illegible] misrepresentation to my client that they --
Ms. Mansum: Your Honor, I object.
The Court: Sustained.
Mr. Briggs: Can I proffer it then, Your Honor?
The Court: You can. I'll have to excuse the jury to do that.
Mr. Briggs: Okay.
The Court: Would you mind stepping back in the jury room, please and don't discuss the case.
(Jury leaves the jury box.)
The Court: Yes, sir.

[page 64, lines 1-7] [redacted] I would confirm that the church and my conversations and my belief has already been [redacted] Mr. Ellis and I have had a number of conversations about this issue, and he has been very supportive of this ministry and even a couple times, when [redacted] I don't try to get into any of that kind of in fact maybe [redacted] for the future so we don't continue having this problem when we go through these.

[8-9] **The Court:** It may be a good idea but it's not relevant to this trial.
[10-11] [redacted] Mr. Ellis, one question. If he were to ask to do that, would you allow him to put a ladder on your property just to be able to do the outside work such as putting a shield on the windows?

[14] **The Court:** Again not relevant to this matter, sir.
[redacted]

[17] **The Court:** All right. You can bring the jury back in. [18] **(Jury returns to the jury box.)**
[19-20] **The Court:** Thank you, ladies and gentlemen. Appreciate it.
[21-23] **Cross examination continued by Mr. Briggs:**
[23 to page 65, line 4] ***Q:*** One other question. Mr. Ellis, in all that I read nobody ever talks about quoting the preacher or actually being able to tell what words are being spoken and all that bit. And it really doesn't [page 65] make a whole lot of difference but I'm just curious. Have you ever been able to tell exactly when the preacher is preaching or when somebody is singing or -- let's ask it a third way and that's three questions. I'll give them to you one at the time. When the preacher is preaching. First answer that. I mean is it clear noise or is it just noise?
[2] **A:** It's both.
[3] ***Q:*** Okay.
[5] **A:** Sometimes it's clear. We might make out a word or two.
[10-11] ***Q:*** Okay. And so you can - again, can you tell who is doing the speaking or singing some of the time, part of the time, most of the time?
[13-16] ***Ms. Mangum:*** Your Honor, I have to object. It's a compound question. I'm not sure --
[15] ***Mr. Briggs:*** That's one question.
[16-17] **The Court:** I think it sounds like a question. Go ahead and answer if you can, sir.

[18-19] ***Q:*** **(by Mr. Briggs)** You said before some of the time. I'm not trying to put words, I'm just trying --

[20-21] **A:** some of the time. You are talking about identifying the person --
[22] ***Q:*** I don't beat up on witnesses, Mr. Ellis. Okay? Okay, that's fine.
[23] **The Court:** Are you through, Mr. Briggs?
[24] **Mr. Briggs:** I'm through, Your Honor.
[25] **The Court:** Thank you, sir.
[page 66, line 1] ***Ms. Mangum:*** Your Honor, no further questions.
[2] **The Court:** Sir, you may step down. [3] **(Witness to the side.)** [4] **The Court:** Next witness.

[5] ***Ms. Mangum:*** The City calls Sherry Callahan.
[6-7] **Sherry Callahan, after being duly sworn by the court, testifies as follows:**
[8-9] **Direct examination by Ms. Mangum:**
[10] ***Q:*** Can you state your full name for the record?
[11] **A:** Sherry Callahan.
[12] ***Q:*** And do you live in the home that we've been talking about?
[13] **A:** I do.
[14-15] ***Q:*** Can you - would you explain the living situation prior to your moving in? Where did you live?
[16-20] **A:** I lived in Coldstream in Irmo and Tim bought a house. He had been in a corporate apartment for a period of time when he came and lived here so he was in a corporate apartment for a long time and we saw each other like that. Then he ended up buying a house and about a year and a half later I moved in. Sold my home.

[21-22] ***Q:*** And while you lived in Irmo was Mr. Ellis at your house most of the time?
[23] **A:** All the time.
[24-25] ***Q:*** All the time. When you moved into the home, what problem did you initially have with the church?
[page 67, lines 1-5] **A:** You know, it progressed over time. He had noticed it on occasion going home even at ten o'clock at night; but it was kind of a number of months of when I first moved in that we would try to be out on the patio. We have a really great screened in porch and so we like to grill and we found ourselves only being able to grill but had to take the food inside to eat it because you just couldn't sit out there and have a conversation. So it was a number of months trying to figure out what we were going to possibly do about this.

Q: And when you say this, what are you referring to?
A: Screaming, drums, organ. I think really the screaming in the microphone has been horrendous, that and the drums. So that was it. You can just really only, you know, kind of put up with it for some period of time but after a while it felt like it was getting worse and more frequent. We couldn't figure out the schedule so it was just an escalation over time.

Q: And did you attempt to make contact with the church or with any of the defendants?

(18 to page 68, line 4) **A:** Yeah. Actually the first thing that I did was I called and spoke with Mr. Clark and I invited him to come over to the house. I thought, you know, surely if he comes in the living room while they are playing he's going to understand how severe this is since we only have ten feet from their property to our property. It's real close and we have windows on both sides of the property; so it just comes in. So he said absolutely not. He said this was how they preached, he tried to educate me on being Pentatonic, Apostolic or *(page 68)* Pentecostal Apostolic which I am not familiar with but I understand that people worship differently. I was trying to help him understand how it was affecting us within our home so I did call him.

Q: And did you make any other efforts to speak to him or to speak to anybody else at the church?

A: No, not at the church. We reached out to Mayor Benjamin on a number of occasions. What he did was very - I think unhelpful. We really wanted him to sit down with Mr. Clark and ourselves and have a conversation about our community and how to resolve this. Instead he gave us the copy of the public nuisance and told us to call the police. And it may have been proper, I don't know but that was -- we reached out, you know, to him on a number of occasions to try to get help with that.
Q: Were there other people in the community that you reached out to before you contacted the police?

A: Yeah, City Council. We went and spoke before City Council, showed some video of what had been going on. And our objections were just very clearly that this was a hot political topic which you can imagine and people just didn't want to get involved.
Q: And so when you couldn't get help anywhere else, what did you do?

(23 to page 69, line 5) **A:** Well, the next instruction was that we were to call the police if it happened and so on the ordinance it was clear about what we should be hearing and experiencing in order to make it, you know, *(page 69)* worth the police officer coming out. So I can't remember the first date or the first citation because we've got so many of them now but we called. The police officer came in the house, closed the door, windows are down. We just said can you listen to this, does this sound reasonable and the answer was absolutely not.

Q: Did you take videos of any of the violations or any of the periods of time prior to the issuance of a violation?

A: Yeah, we have dozens of hours of video, more than dozens, both inside our house and then also on the screened porch where you can hear incessant drumming and both Mr. Clark and his other guest speakers that come screaming into the microphone.
Ms. Mangum: I beg the court's indulgence. (Pause.)
Q: *(by Ms. Mangum)* Does this disc look familiar to you?
A: It does.
Q: And what's on this disc?
A: Screaming and yelling and drumming and maybe my son with his head under the pillow trying to go to sleep.
Q: Is it video from your home?
A: It's absolutely video from my home.
Ms. Mangum: I'm going to introduce this into evidence. Do you have any objection?
(23 to page 70, line 1) **Mr. Brian:** I just need to know which one it is. Your Honor, I have no objection if they make it clear by testimony or with that whether or not windows are open, doors are open and things *(page 70)* like that. What's the context?

The Court: If they don't ask her that, you certainly can.
Ms. Mangum: Your Honor, at this time we would move to mark this into evidence and publish it.
The Court: Is that specific dates?
Ms. Mangum: We do have specific dates.
The Court: Is this one a specific date?
Ms. Mangum: I don't have the date written down, Your Honor.
The Court: If it's not one of the dates of the violation, I'm not sure it's admissible. They are charged with doing it on specific dates, not some other time.

[11-14] *Ms. Mangum:* Could we take this up as a matter of law outside the presence of the jury?
[15] The Court: Sure. Don't discuss the case. [16] (Jury leaves the jury box.) [17] The Court: Yes, ma'am.

[18-19] Mr. Briggs: Do we know what that date that is or is it a compilation?
[20-23] *Ms. Mangum:* Your Honor, I do have a video of one of the specific instances. The first video I was going to play is not one of the violation dates that's before the court.
[24] The Court: Then why would it be admissible?
[24 to page 71, line 1] *Ms. Mangum:* I think it's admissible to actually show the defendant's character. It goes to show motive, intent, absence of [page 71] mistake.
[2-3] The Court: They haven't claimed it's a mistake. You don't need to rebut something that hasn't been put into evidence yet.
[4-6] *Ms. Mangum:* Okay. But it absolutely goes to show their motive and their intent.
[7-8] Mr. Briggs: Your Honor, you prove character by hearsay testimony. What's his reputation –

[9-11] The Court: I don't think there's any question about motive right now. Motive is not an element of the offense for one thing. You don't have to prove motive. It's not part of the offense.

[12-13] *Ms. Mangum:* Yes, Your Honor. But we are talking about a series of conduct that has taken place over the last two years.
[14] The Court: So what do you think their motive is?
[redacted]
[15-17] The Court: They all show up and do this just to annoy the neighbors?
[redacted]

[18-21] The Court: Well, I don't think a video of them having a religious service is going to prove –
[22] *Ms. Mangum:* No, it's video from inside the victims' home.
[23 to page 72, line 3] The Court: Then that shows even less. It doesn't show anything about the defendants. It just shows that they were worshiping and there was noise on some occasion. If that occasion is [page 72] not one of these incidents, I don't think it's relevant. I've (inaudible) One of my last cases and they were charged with a dog running loose on a specific date. They proved the dog was running loose on another date. Not guilty. Not relevant. It's got to be on the date charged.
[4-5] *Ms. Mangum:* Your Honor, I'm certainly not going to argue with you but if the video can show that it is part of their routine practice or habit.
[6-12] The Court: They are not charged with it. This is not a civil case where routine or habit matters. It's a criminal case. Specific acts on specific dates are what constitute criminal offenses.
[13] *Ms. Mangum:* Yes, Your Honor.
[14-16] Mr. Briggs: Your Honor, Rule 43 says evidence must be relevant and it must not be prejudicial, confusion or a waste of time.

[17-18] The Court: Well, I've already ruled it out. If you have videos of these incident dates then we'll see if they are admissible.
[19] *Ms. Mangum:* Okay, Your Honor.
[20] The Court: If it's a general video –
[21-23] *Ms. Mangum:* I do have a video that is specifically related to one of the citations that I'd like to show the jury.

[23 to page 73, line 2] The Court: And that doesn't mean the door couldn't be opened by something done later on by the defendants. At least right now it's not admissible in its case in chief. If they get on the [page 73] stand and testify they never made loud noises ever over there we may have an open door.

[2-3] *Ms. Mangum:* Yes, Your Honor. Just to clarify before the jury comes out, this disc 507, this takes place on April 19th, which is one of the dates in question.
[4] The Court: Okay.
[7-8] *Ms. Mangum:* Do you have any objection to me entering that?
[9] Mr. Briggs: No.
[10-11] The Court: Without objection. And can we bring the jury back?
[12] *Ms. Mangum:* Yes, Your Honor.
[13] The Court: Go ahead and set it up.
[14] *Ms. Mangum:* You want to mark this. [15] (Disc received into evidence as City's Exhibit #5.)
[16] (Jury returns to the jury box.)

[17 to page 74, line 9] **The Court:** Thank you again, ladies and gentlemen. Appreciate it. We are going to set up these videos. It will take a minute or two. Ms. Mangum, you can play your video now. While we have got a little break let's do this. I'm going to excuse y'all. Don't leave yet. Y'all have got two decisions to make before you reach a verdict. What do you want to do for lunch? I'm going to suggest to you that we take a full hour, hour and fifteen minutes and go somewhere, we can just keeping working which means we might work to five o'clock without eating anything or we can take ten or *[page 74]* fifteen minutes and go get a pack of crackers and a CocaCola. Now this is your first (inaudible). I can't do something for some people and something for others. I will ask the foreman to poll the jury and write down what you wish to do. Second thing is if we have to come back tomorrow what time do y'all wish to come back. I'm not going to force you to come back - I can be here at six o'clock if they let me but, you know, whatever y'all want to do suits me. So if y'all can make those decisions and write them down, I'm going to excuse you to the jury room to discuss that.

(Jury leaves the jury box.) (Pause.) (Jury returns to the jury box.)

The Court: I appreciate your help, ladies and gentlemen. Thank you. You may go ahead, please, ma'am.

(Video viewed by the jury.)

Q: *(by Ms. Mangum)* Sherry, the noise that you heard, was it raining that day?

[18 to page 75, line 1] **A:** Yeah, I don't know if it was raining or if I was doing dishes or what. We actually - we kind of made a commitment to try and still get things done because sometimes we'll just turn it on and we'll just sit there. How long do we let this go? And then we kind of said, you know, forget it, we've done this for a hundred or however many dozens of hours and so we might have been doing the dishes. It sounded like that but it did sound a little like rain but I think it was just doing the dishes because I heard the dishes going, too. So that *[page 75]* may be running water or even the dishwasher possibly.

Q: And the noise that we heard in the background, the constant banging, where is that coming from?

Mr. Briggs: Your Honor, I think the video is self-explanatory.

The Court: Well, it proved the noise is there but you really didn't prove where it was coming from so I think it's an appropriate question. Overruled.

Q: *(by Ms. Mangum)* The noise in the background, the constant beating, where is that noise coming from?

A: Outside of my house, not in the house. It's coming from the church.

Q: And do you have any idea what that noise is?

A: It's drums. It's drums drumming. And that was an example purely of just a drumming episode so he wasn't on the microphone obviously so that was just typical drumming and I think, you know, the problem is to - I don't know what your volume was on but I mean as you'll hear from officers I suppose that the sound in the house is entirely different than listening to it on a video. I mean this gives you, you know, a snapshot of it but it's not what it physically does to you, to us being in it constantly.

Q: What impact has this noise had on your family?

A: Okay.

Q: Take a moment.

[23 to page 76, line 15] **A:** It has just been a daily grind. Just incessant sound, an *[page 76]* inconsiderate man and his wife in church. It has challenged our brain to figure out how can we find common ground. We've been to mediation, we've done everything we know to do. We can't even get a schedule of services. My son no longer - I have a nine year old son. He no longer stays with us during the week because he can't get to sleep because his room is over - it's on the second floor over the back of the house which is where a lot of the sound comes from. And so I had to make that agreement. Not to mention that we've had dozens of officers through our house on a monthly basis and he didn't need that either. But it's very stress provoking. Tim has a very stressful job. I think I do, too. I do a lot of traveling which can be stressful and then to come home to not be able to enjoy your home is unbelievable. Unbelievable. So ... I swore I wouldn't do this, Jess. I'm sorry. But really it's been not something that people can understand until you've lived it.

Q: And when you moved into this home, did you set out to get this church? Were you against this church?

A: We, to give you a picture. Tim and I don't do anything except our stuff and our family stuff. We don't have like a school of friends and go out and, you know, go party or go do whatever. We just like to stay at home and so when I moved in and that's what we wanted to do on the weekends, watch movies, play cards, sit on the patio. We grow tomatoes, you know, different kinds of things. It just became why bother. It just, you know, why bother. And so it has been - I forgot your question. I'm sorry.

[page 77, lines 1-2] ***Q:*** That's okay. Were there times that the church did not use sound amplification that you are aware of?

Mr. Briggs: Your Honor, I object. Unless she's been in the church, she has no personal knowledge of whether there's amplification or not and it's hearsay to her.

The Court: Well, I think it's irrelevant unless you know of something on one of these incidents dates that they are charged with. Those are the dates I'm concerned with, the dates of the charges.

[10-11] *Ms. Mangum:* Okay, Your Honor. I don't have any further questions for Ms. Callahan.
[12-13] Cross examination by Mr. Briggs:
[14-15] *Q:* Ms. Callahan, do you have any affiliation with a church or other religious organization?
[16] *Ms. Mangum:* Your Honor, I object.
[17-18] The Court: Yes, sustained. If you want to make a proffer, I'll let you make one, Mr. Briggs.

[19-20] Mr. Briggs: I'd just proffer the same question, Your Honor. No need to repeat it.
[21-22] The Court: Unless we can send the jury out and explain to me how that's relevant and if you can explain it to me I'll be glad to listen to you, sir
[24] Mr. Briggs: I think we should, Your Honor. [25] (Jury leaves the jury box.)
[page 78, line 1] The Court: Yes, sir.
[redacted]
[10-11] The Court: Well, then ask her if she has a bias and prejudice against religion.
[12-13] Mr. Briggs: You want me to ask it now first and see if she will answer it?
[14] The Court: We can. Go ahead.
[redacted]
[23-24] The Court: I'm not getting into her personal life unless you can prove to me beforehand that it's relevant. Otherwise, it's just a fishing expedition.
[25-25] *Q:* (for Mr. Briggs) do you have prejudice against any particular type of religion, not necessarily this one but is there some religions you just don't agree with?
[page 79, lines 1-2] *Ms. Mangum:* Your Honor, I'm just confused. Is this on the record, is this a proffer?

[3-5] The Court: We are just finding out how it goes before we bring the jury back out. If she has a bias or prejudice it would be relevant so he's just asking her does she have one.
[10] A: The answer is no.
[11] Mr. Briggs: Okay.
[12] The Court: You ready to bring the jury out?
[15-16] Mr. Briggs: Yes, Your Honor. I've just got one more question. [112] (Jury returns to the jury box.)
[112] The Court: And thank you again.
[113-119] Cross examination continued by Mr. Briggs:
[115-21] [redacted]
[23-24] A: Tim and I make a joint decision if the call should be made and he'll say call the police
[25] *Q:* That's not the answer to my question.
[page 80, line 1] Mr. Briggs: I asked if she made the calls, Your Honor.
[2-5] A: I guess the best way that I can answer that is that I know that I've made the majority of the calls.
[6-7] Mr. Briggs: That's an answer. Thank you. Nothing further, Your Honor.
[8] *Ms. Mangum:* No further questions, Your Honor.
[9] The Court: You may step down. [10] (Witness to the side.)
[12-13] *Ms. Mangum:* Your Honor, at this time we would call officer John Griggs to the stand.
[111-12] John David Griggs, III, after being duly sworn by the court, testifies as follows:
[113-14] Direct examination by Ms. Mangum:
[115] *Q:* Officer Griggs, can you state your full name?
[116] A: John David Griggs, III.
[117] *Q:* And I know it's a little obvious but where do you work?
[118] A: City of Columbia Police Department.
[119] *Q:* How long have you been a police officer?
[120] A: Since - my hire date with the City was September 19th, 2011.
[121] *Q:* And what area in the City are you assigned to?
[122] A: Metro Region which is downtown.

[23] **Q:** How do you know Tim Ellis and Sherry Callahan?
[24-25] **A:** I've been to their home on several occasions in reference to these calls.
[page 82, lines 1-3] **Q:** And let's just get right into the specific calls. Why were you dispatched to their house on Wednesday, February 27th at 8:53 p.m.?
[21] **A:** Noise complaint.
[22] **Q:** What did you find when you got there?
[23-25] **A:** Whenever I got there this particular date had not been the first time I was dispatched there. I think by this time it had been my second or third. Anyway, got sent there in reference to a noise complaint. Normally whenever we go there we'll meet them at the back of the home, go inside the home. I'll speak with them briefly about what in particular they are hearing. We'll shut the door, shut the windows, try and recreate the atmosphere that they had and I'll just stand there and listen to see if I can hear anything. I have been out there a few times when I won't hear anything and citations were not issued but every time a citation is issued it's noise. It's drumming, organs are playing. It's not just normal talking. I mean sometimes it's screaming into a microphone. You can definitely hear that it's amplified through a speaker. You know, drums - the drum set is going crazy. People yelling loudly. It's definitely not something that I would want in my home.
[24-25] **Q:** In terms of the volume that you hear or that you heard that night on Wednesday, February 27th, how would you characterize that volume?
[25] **A:** Unreasonable.
[24-25] **Q:** And based on everything that you heard and saw that night in their home, what did you do?
[page 83, lines 1-3] **A:** Issued a citation this particular night to Johnnie Lee Clark, who is the pastor at the church and there running things. I felt he was the responsible party to receive the citation.
[1] **Q:** And under what ordinance did you issue the citation?
[2] **A:** 8-67(c).
[3] **Q:** Which is just in general terms?
[3] **A:** Unreasonable noise through sound amplification device.
[4-5] **Q:** What was the process that you used to issue the defendant a citation that night?
[10-12] **A:** Most of the time pastor Clark refuses to come to the door. We choose not to interrupt their service by making any entry into the church. We'll enter the foyer, wait for one of the congregation members to see us. Normally they'll notify an usher. I believe the gentleman referred to as Thomas is the one I've had the most interaction with. He'll come down the aisle. We'll hand him the citation and that will be that. He'll take it, return back inside the church and we'll leave.

[24-25] **Q:** So that was Wednesday, February 27th. Let's move on to Thursday, February 28th, at 8:51 p.m. why were you dispatched that night?
[21] **A:** Noise complaint.
[22] **Q:** And what did you find when you got there?
[23 to page 85, line 3] **A:** Let me make sure it's the same. On this particular night, February 28th, according to my incident report which I write -- these incident reports I write immediately after receiving the citation. *[page 85]* It's just paperwork we don't like to hand on to so this is fresh in my memory. This night p.a. system, drums; organs could all be heard while inside their home.
[1] **Q:** And were the windows and the doors closed?
[2-3] **A:** Once again, yes, ma'am. The back porch door shut, windows closed. Sitting - not sitting in the home but standing in their living room where their couch and TV is. It's kind of an open residence. The kitchen is right there next to the living room as well
[9-10] **Q:** And based on everything that you heard that night while you were in their home, what did you do?
[11] **A:** Issued a citation.
[12] **Q:** And what ordinance was the defendant violating that night?
[13-14] **A:** The same ordinance as before, the sound amplification device is 8-67(c).
[15-16] **Q:** And when you issued the citation, can you explain what the process is?

[17-25] **A:** Same process. Once again so as not to disturb their services we'll walk around to the front of the church, go up the stairs, enter the foyer. It's a glass pane door, it's a very small foyer, another set of glass pane doors and then you enter the church which is much smaller, much smaller than this courtroom. Wait for someone to notice us, approach us. We'll hand them the citation, let them know it's for Pastor Clark. They'll take it from us and then we'll leave.

[25 to page 86, line 1] **Q:** And so the next citation you issued was on March 10th? It was a Sunday? It was at 1:19 p.m., is that correct?

A: March 10th, Sunday. Yes, ma'am, 1:00 p.m.
Q: And why were you there that day?
A: Noise complaint.
Q: And how was this complaint different - against the defendant different than the previous complaints? Do you recall?
[redacted]
[redacted]
The Court: It is.
[redacted]
The Court: Sustained.
Q: *(by Ms. Mangum)* What sort of instruments did you hear that day?
A: This day I heard organs, drum set and shouting from a p.a. system which I documented myself as uncomfortably loud noise level.
Q: And so what did you do based on your findings that day?
A: Same exercise. Went to the front of the church, into the foyer with the citation already written, briefly spoke with a gentleman - I can't say it was Thomas for sure. Handed him the citation and left.
[page 85, line 1] **Q: And let's move to Friday, April 19th.**
[redacted]
A: The most recent one we spoke of was March 10th, 2013.
The Court: March 10th, '13.
Mr. Briggs: Okay. Yeah, I've got that one.
Q: *(by Ms. Mangum)* So on April 19th, was a Friday at 8:30 p.m. why were you dispatched to the house?
A: A noise complaint.
Q: And what did you find when you got there?
A: Same thing we normally do. I spoke with Ms. Callahan and Mr. Ellis. Drum set and loud singing from a p.a. system I observed in their living room and I documented that as unreasonably loud.
Q: And so based on that you then did what?
[16 to page 86, line 1] **A: Based on that I wrote a citation. This particular day, April 19th, Mr. Johnnie Lee Clark was not there. I attempted to issue the citation to Harriet Clark, Dr. Clark, and she was next door. I assumed her to be in charge of the church at that particular time. I actually spoke with Ms. Clark on the front step, notified her that she was receiving a citation for the loud noise. At this point she became very upset, told me that only Johnnie Lee Clark was supposed to get the citations. She refused to give me any of her information, her date of birth, she refused to give that to me, slammed the front door in my face, locked the door and went back inside and did not return to the door to speak to me.**
[redacted]
The Court I agree. Motion granted.
Q: *(by Ms. Mangum)* And so you returned to the property again on Friday, October 4th, 2013, at 8:40 p.m.?
A: Yes, ma'am.
Q: And why were you there at that date and time?
A: We were dispatched for a noise complaint.
Q: And, when you got there, what did you find?
A: During this date, a p.a. system which included organs, drums, loud singing, loud yelling and a guitar. I wrote to be at a level that could be heard clearly and loudly within Mr. Ellis' home with the doors and windows closed.
Q: And so did you follow your usual procedure that night in issuing a citation?
A: I did, yes, ma'am.
***Ms. Mangum:* Your Honor, I have no further questions for officer Griggs.**
The Court: All right.
Cross examination by Mr. Briggs:
[25 to page 87, line 1] **Q: Officer Griggs, in looking at the incident reports, I didn't see any decibel meter readings except for 4-19-20. Do you have any notes that suggest that you took some meter readings any of these other days that you've talked about?**

A: No, sir. If I took meter readings they would be documented in the report.

Q: Would be documented in there. Okay. When you discuss with the complaining witnesses about a citation, do you make that decision alone or do you consult with them or they tell you they think there should be a citation issued? How does that process work?
A: The decision lies solely with me.
Q: So you're the one that interprets the language in this statute?
A: Yes.
Q: Do you have any guidance other than what's in this statute to guide you as to what is too much noise?
A: No, sir, only my interpretation of the statute.
Q: Have you told either Apostle or Dr. Clark, his wife, how much noise is too much?
A: I believe I've asked them to turn it down.
Q: That's fine. That's an answer. Now I need to go back and rephrase a question. Is it fair to say that the complaining witnesses encourage you to write a citation or not?
A: No, not fair to say.
Q: I'm going to hand you something and I want you to read the citation and just the first phrase that's marked in red. Tell me what the statute is first.
A: Disturbance of religious worship.
Ms. Mansum: Your Honor, I object.
[page 48, line 1] The Court: I'm not familiar with what's going on.
Mr. Briggs: Do you want to look at the statute, Your Honor.
The Court: Let's send the jury out. I'm not familiar with where we are going. Y'all excuse us, please. Don't discuss the case. (Jury leaves the jury box.) The Court: What are we getting at here?

Mr. Briggs: Your Honor, I was going to ask him a question once he read the statute that if a person asked him to serve a citation at that very time by interrupting the church would they possibly be in violation of that statute?
The Court: Irrelevant.
Mr. Briggs: Okay. Well, let me just ask - okay. Bring the jury back. I want to ask him another question.
The Court: All right.
Mr. Briggs: I proffer the statute as being relevant, Your Honor.
The Court: Okay. (Jury returns to the jury box.)
The Court: Thank you, ladies and gentlemen. Yes, sir.
cross examination continued by Mr. Briggs:
[23 to page 49, line 3] Q: Officer Griggs, again we know that incident reports don't come into the record but you have the right to refer to them and I have not objected to that. It's appropriate. In your incident report on *[page 49]* 2-27-13 you mentioned that the, quote, amplifying device created loud noise for approximately thirty-five minutes. Is that your recollection of what you heard that particular day?

A: I believe in the incident report it's talking that's what the homeowners told me.

Q: Okay. If somebody is having loud noise for thirty-five minutes in a six-room house, why wouldn't they move to another room?
A: Can you rephrase the question?
Q: If you have loud noise - and it seems like every one of the instances has been in the living room, now correct me if I'm wrong. Is that true of the ones you wrote?
A: That's where I've been standing when I observed the noise.
Q: And again so we don't confuse the jury, that's the part of the house where they park their cars and it's the back side of the house from the street, is that correct?
A: Correct
Q: For say thirty-five minutes. My question to you is why wouldn't an intelligent person move to another room for thirty-five minutes?
Ms. Mansum: Your Honor, I have to object.
The Court: Sustained.
Mr. Briggs: Reserve my objection, too, Your Honor. I've got one more here.

[24 to page 50, line 1] Q: (by Mr. Briggs) And we've established that except for 4-19-20 when you did do a meter reading there was no other meter readings for the ones you discussed, is that correct?

A: If I took a decibel reading with our meter, I made sure to document it in the report.
Mr. Briggs: Okay. Thank you very much. Do you need this (inaudible), judge?
The Court: Give it to the clerk and let her make it a part of the record, please.
Mr. Briggs: That's all I have, Your Honor.
The Court: Anything, Ms. Mangum?
Ms. Mangum: Your Honor, I don't have anything further.
The Court: All right. You can step down, sir. (Witness to the side.)
Ms. Mangum: Your Honor, I'd ask that the court allow Officer Griggs to leave. He has to be on duty at six o'clock tonight.
The Court: Any objection, Mr. Briggs?
Mr. Briggs: I don't anticipate needing him any further, Your Honor.
The Court: Okay. You are excused, sir.
Ms. Mangum: Thank you, Your Honor. At this time, we would call Officer Shumate.
Tara R. Shumate, after being duly sworn by the court, testifies as follows:
Direct examination by Ms. Mangum:
Q: Officer Shumate, would you state your full name for us?
(page 31, line 1) A: Tara Meghan Richardson Shumate.
Q: And where do you work?
A: City of Columbia police department.
Q: How long have you been a police officer?
A: Almost two years.
Q: And where are you stationed within the City?
A: Metro Region. Right now I work the Two Notch Road area.
Q: What does the metro region encompass?
A: Downtown Columbia and parts of Two Notch.
Q: How do you know Tim Ellis and Sherry Callahan?
A: I was dispatched to their residence on the 4th of April - I believe it's thirteen or fourteen - in reference to a noise complaint. When I arrived on the scene they had some issues dealing with the church where you could hear amplified noise from speakers the church had inside when they were holding service and this was at approximately eight o'clock at night.
Q: So did you enter the residence?
A: Yes, ma'am.
Q: And when you entered the residence, what did you hear?
A: I could hear the noise from the church. It echoed throughout their back porch and when we stepped inside you could still hear it.
Q: When you say the noise, could you be more specific?
A: You could hear music that they were playing inside of the church and you could hear talking like preaching.
Q: And how would you describe that noise?
(page 32, line 1) A: Very loud.
Q: And so based on what you heard that night in their home, what did you do?
A: I wrote a citation and I handed it to one of the deacons of the church. I also did a report.
Q: and what did you cite the defendant with?
A: I cited him with the amplified devices statute.
Ms. Mangum: That's all the questions I have, Your Honor.
The Court: Okay. Mr. Briggs?
Mr. Briggs: Nothing for this witness, Your Honor.
The Court: Thank you. You may step down. Do you want her excused?
Ms. Mangum: Yes, Your Honor.
The Court: Any objection, Mr. Briggs, to excusing her?
Mr. Briggs: No, Your Honor.
The Court: You are excused, ma'am. Thank you. (Witness to the side.)
Ms. Mangum: Your Honor, I have a matter of law that I need to take up.
The Court: Okay.
Ms. Mangum: I will be brief.
The Court: That's fine. Let me excuse you. Don't discuss the case. (Jury leaves the jury box.)

[1:31] **The Court**: Yes, ma'am.
[page 93, lines 1-4] ***Ms. Mangum***: Your Honor, based on the previous rulings, I just want to get a ruling. My next witness is Captain Marsh. Prior to issuing any citations, Captain Marsh met with the defendants because of the problems with the noise and trying to resolve it so that a citation did not have to be issued. I would like for him to be able to discuss that on the stand.
[2:42] **The Court**: What is going to be the gist of the conversation?
[2] ***Ms. Mangum***: I'll be glad to proffer the testimony.
[2:44] **The Court**: You can just summarize what you think will happen.
[2:45] ***Ms. Mangum***: He's going to say that he asked or he spoke to the preacher about possible resolutions that would not involve a citation - turning the music down, changing the direction of the one particular speaker completely facing the victims' home and so he asked that that speaker be moved. And he may have some other things that they offered and that he was told flat out that, no, they would not lower the volume.

[2:58] **The Court**: Mr. Briggs, what do you think about all of this?
[21 to page 94, line 1] **Mr. Briggs**: Your Honor, let me look at my evidence. It comes into that area where relevant testimony that it's not competent and that's not the normal competence but it's competent and I'm going to read just a couple of things so the record shows what I was doing. The court already knows 403 about prejudicial, [page 94] confusing or waste of time, Your Honor.
[3] ***Ms. Mangum***: Your Honor - I'm sorry.
[3:11] **Mr. Briggs**: Your Honor, here is what I want. Relevant but not competent. And I could quote other things but I'll just tell you my notes from reading the evidence book is the ultimate test for admission of relevant testimony, we now adopt the language in pertinent part of federal rule of evidence 403 that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. That's the rule, Your Honor. It can be relevant but it's just bad law and, therefore, it should be excluded.

[3:33] **The Court**: I'm thinking that it may have relevance but that would be intent.
[3:41] **Ms. Mangum**: That's exactly what I was going to say, particularly in light of your decision to read the intent portion.

[16 to page 95, line 4] **The Court**: (Inaudible) But I do have to - once you get into another area, offers of compromise and offers to work things out you just open a second trial. It's not curable (inaudible) because I can exclude it for confusion or too much time but I haven't made up my mind. Tried a case right here in this courtroom twenty years ago, the commission on the blind. There are apparently two factions down there and they don't like each other. Two of them bumped into each other in the hallway. Of course, neither one of them could see but nevertheless we had testimony and then one guy goes, well, I want to testify he's a member of the other faction that doesn't like [page 95] me. Next thing I know I've literally got eighteen witnesses in each faction lined up to talk about the factions rather than the two second incident that happened in the hallway. So I remembered that. I would never go down that road again.

[4:11] ***Ms. Mangum***: And, Your Honor, we don't want to do anything that's going to mess with the issues but I do think that his very limited testimony as to what the police department did before issuing the first citation does clearly show that the defendant from the get go, from the first citation that was issued that's before the jury today, the defendant knew he was in violation, intended to be in violation of that statute.

[4:33] **Mr. Briggs**: Your Honor, if we get into that then I've got to have the defense of what my client's religious convictions are.
[4:4] ***Ms. Mangum***: That has nothing to do with it, Your Honor.
[4:45] **Mr. Briggs**: And why they think - they believe in the First Amendment, Lady.

[12:56] **The Court**: Yeah, let's be calm. I think it is relevant. I think more than likely it's relevant. It's just whether it takes too much time and confusing getting off on another issue. Ask yourself this. Do you think the jury (inaudible) was a mistake anyhow? I mean don't you think they already think that they intentionally created the noise. They don't have to intend - the intent is to create the noise. It's not intent to bother the neighbors (inaudible) I don't think. And certainly this noise is not being created by an accident.

[25 to page 96, line 1] ***Ms. Mangum***: I think based on the intent charge that you read earlier Captain Marsh's testimony is key to this in the case.
[5:21] **The Court**: Well, I'm sitting here wasting time thinking about whether it's a waste of time.
[5] ***Ms. Mangum***: I intend to be very brief, Your Honor.

The Court: Let me ask you one other thing. If you assume this case is going to be appealed, do we really want to muddy the waters and create other issues that might send us back here again or do we want to keep this clean and neat?

Ms. Mangum: Absolutely we want to keep it clean and neat but I think that the jury has a right to know and should be able to evaluate what happened prior that led to show the defendant's intent.

Mr. Briggs: We are talking about character, Your Honor.
The Court: May I give the jury an instruction before he testifies that, if it is relevant at all, it's only relevant to the issue of intent and nothing else?
Ms. Mangum: Absolutely. I'm fine with that, Your Honor. And you can also - I mean they can determine the weight that they give the evidence.
The Court: Do you mind my giving the jury such an instruction, Mr. Briggs?

[23 to page 97, line 2] **Mr. Briggs:** Your Honor, I think it's a crippling instruction and I think it has the same problem that what's she's trying to do like them trying to introduce a lot of Mickey Mouse [page 97] little criminal charges that we don't even know how long ago they were.
The Court: Well, we haven't gotten into that yet.
Mr. Briggs: I believe it's attacking character, Your Honor.
The Court: All right. I think I'll let him testify. I will give a short instruction.
Ms. Mangum: And I will be brief, Your Honor. Thank you.
The Court: Okay. You can bring them out. **(Jury returns to the jury box.)**
The Court: Thank you for your patience, ladies and gentlemen.
Earle M. Marsh, after being duly sworn by the court, testifies as follows:
The Court: Ladies and gentlemen, I need to give you an instruction prior to this testimony. We've had some discussion about it while you were out. If you find this testimony to be relevant, and that's entirely up to you (inaudible), then it would only be relevant, if at all, to the issue of intent. It's not relevant to anything else but it's up to you to decide what weight you give this, whether it's truthful and whether it helps you on the issue of intent. (inaudible).
Ms. Mangum: Thank you, Your Honor.
Direct examination by Ms. Mangum:
Q: Could you state your name, please?
[page 98, lines 1-2] **A:** Yes, I'm Captain Earle M. Marsh. And I work for the Columbia Police Department. I am the Metro Region Commander.
Q: And how long have you been with the C.P.D.?
A: A little over twenty-three years.
Q: And I think you said your title was? I'm sorry.
A: Metro Region Commander. I'm in charge of all the officers that work in the metro region which is downtown and out Two Notch Road.
Q: How many officers does that include?
A: We're slated for fifty-one. Right now I think we've got like forty-six. Somewhere in that neighborhood.

Q: How did you originally come in contact with the defendant in this case?
A: I was originally contacted by Ms. Callahan via e-mail in reference to an issue she was having with a church next door. I went and met with Ms. Callahan and Mr. Ellis and discussed the issues they were having. I was actually just moved into the Metro Region as the new Metro Region Commander. Sat down and spoke with her about the issues she had.

Q: And based on that conversation did you meet with the defendant?
[22 to page 99, line 1] **A:** I did. I reached out to Apostle Clark. I met with him at his church right at the beginning of this whole - I don't have the date or time but right when I first got contacted by Ms. Callahan and Mr. Ellis. I arranged a meeting. Myself and my lieutenant, Chris [page 99] Roberts, went to the church and met with Apostle Clark.

Q: And what did you talk about when you met with the defendant?
A: When I met with Apostle Clark, he invited us into the church and we actually went back to his office and we discussed - I explained to him the noise issues that Mr. Ellis and Ms. Callahan were having with the church being noisy enough that it was, you know, affecting their quality of life, so to say, next door. We discussed ways that may be able to keep from having to get any kind of legal process involved, tried to mediate between the two and tried to come up with ways to keep us from having to take legal action.
Q: And what suggestions did you offer?
A: A couple of things that I asked was if Apostle Clark could --

Mr. Briggs: Your Honor, this part is irrelevant I think.
The Court: I think you may be right. Just the offer if there were other things I think is sufficient.
Mr. Briggs: Suggestions that might improve the situation.
The Court: To get to the issue of intent, if at all.
Ms. Mangum: Okay. I'll move on, Your Honor.
Q: (by Ms. Mangum) Based on your suggestions, what was the defendant's response?
[24 to page 100, line 2] **A:** His response was that the church had been there for an extended period of time and that the suggestions that I had made to [page 100] lessen the impact next door that he was not willing to adhere to those suggestions.

Q: And was the defendant made aware at that point that he was in violation of the City ordinance?
A: I sat down and I explained the City ordinance, the portion of the ordinance that we are using for the amplification because he was under the understanding of one of the other ordinances that gave him up until ten o'clock at night. I explained that particular ordinance to him, the amplification and all that and that we were going to be starting to have to document it on reports if we can't come to some type of happy medium - and then eventually it would lead to criminal charges for violating that particular ordinance.
Q: And this whole conversation took place before your department issued any citations, is that correct?
A: That's correct.
Ms. Mangum: That's all the questions I have, Your Honor.
Mr. Briggs: Your Honor, just one question and then I'll make my objection at the end of his.
Cross examination by Mr. Briggs:
Q: It's Lt. Roberts, right?
A: That's correct.
Q: You said you explained -
The Court: This is Captain Marsh.
[25 to page 101, line 1] **A:** No, I'm Captain Marsh. Lt. Roberts accompanied me to that meeting.
Q: We haven't heard from him, have we?
A: No, sir.
Q: Okay, sorry. You said you fully explained something about the ordinance but did you read section 8-67 to Apostle Clark or not?
A: I don't recall if I actually took the ordinance over there in hand. I remember discussing it but actually having it hand I don't recall if I had it or not to be quite honest with you, sir.
Q: And you did not give him a copy of it at that time?
A: No. I don't recall giving him a copy of it at that time.
Q: Can you tell us today how much is too much noise to disturb somebody?
A: As far as?
Q: Your definition of it. What's too much?
A: I mean if it's disturbing to the person that's listening to it then I would guess that would be in the eye of the beholder or the person that's being disturbed.
Q: So you are letting the citizen decide -
Ms. Mangum: Your Honor, I have to object.
The Court: No, I'm going to let him go. Go ahead, sir.
Q: (by Mr. Briggs) So you are letting the citizen decide how much is too much noise?
[redacted]
Mr. Briggs: Okay. No further questions.
Ms. Mangum: I just have one quick follow-up.
[page 102, lines 1-3] **Re-direct examination by Ms. Mangum:**
Q: After the initial call from the citizen, who makes the final decision as to whether a citation is issued?

A: When the officer arrives, they go and make contact with the person who called the police and then they make the determination of the level of the noise at the time that they are there if they write the citation or not. And as long as it meets the requirements of the ordinance that's when they write the citation. If they don't hear the noise, we take a report and the complainant is allowed to sign a summons on what they heard when we were not there.

Q: **But the issues that are before the court today, they were all issued by your officers based on what they observed?**
A: I'm not sure what's before the court.

Q: All right.
Ms. Mangum: No further questions.
The Court: All right. Thank you, sir.
Ms. Mangum: Your Honor, may Captain Marsh be excused as well?
The Court: Any objection, Mr. Briggs?
Mr. Briggs: No objection.
The Court: Thank you, sir. You are excused. (Witness to the side.)
Ms. Mangum: Your Honor, timewise can I get an idea? Are we breaking for lunch or are we --
[page 103, lines 1-3] The Court: We are going to take a fifteen minute break at some point.
The Court: Okay.
The Court: Probably not quite yet.
Ms. Mangum: Okay.
Mr. Briggs: Your Honor, just for the record, I want to renew my objection to all of his testimony based upon the evidence that which is --
The Court: 403(b)?
Mr. Briggs: 403, Your Honor. And that includes the prejudice and it also includes the gloss on that section with regard to whether or not it's prejudicial.
The Court: Okay. Same ruling. Denied.
Mr. Briggs: Yeah, I just want it for the record, Your Honor.
The Court: That's fine.
[redacted]
The Court: Okay. Any motions at this time, Mr. Briggs?
Mr. Briggs: Yes, Your Honor. I'll be very brief.
The Court: Well, let me send the jury out. (Jury leaves the jury box.)
The Court: Okay. Yes, sir.
[23 to page 104, line 4] Mr. Briggs: Your Honor, there are a couple of things I think the City has failed to do. One, there has been absolutely no showing of a clear and present danger of some public policy. I won't [page 104] belabor that point. But again knowing that the test is beyond a reasonable doubt, Your Honor, I don't think they've come close to meeting that standard. So far we've only heard about one decibel reading of fifty-four I believe it was.
The Court: I think it was fifty-five.
Mr. Briggs: And the rest of it is just their seat-of-the-pants opinion of the police officer. And I have to note that Captain Marsh admitted that - now this is my word - that they are greatly influenced by the citizens defining what is too much, Your Honor. He clearly said that they look to what the citizen is complaining about and what they think is too much.

The Court: Okay. Well, your motions are denied. One housekeeping matter that's down the line. My jury verdict form does not have a- since all the charges are the same charge, may I put the date and day of the week that allegedly occurred so that they can sort one out from the other. Otherwise I'll send the tickets back with them. I'll have to match the ticket numbers up and it might just waste time because they won't know where to look for the date of the offense on the ticket anyhow. I do, you do and you do but they don't. So any objection to my writing the date and-the day of the week of the alleged violation on each verdict form?
Ms. Mangum: Not from the City, Your Honor.
The Court: Mr. Briggs, is that okay?
Mr. Briggs: Yes, sir.
[25 to page 105, line 2] The Court: To help the jury sort it out and figure out [page 105] what to do when we get to that point. All right. Mr. Briggs, are you prepared to call your first witness?
Mr. Briggs: Yes, Your Honor.
The Court: Bring the jury out. (Jury returns to the jury box.)
The Court: All right, Mr. Briggs, you can call your first witness, sir.
Mr. Briggs: We are calling Apostle Clark, Your Honor, who is technically pastor of the church whereas -- I lost my piece of paper. Your wife is what? Well, wait until you get to the stand.
Johnnie Lee Clark, after being duly affirmed by the court, testifies as follows:
Mr. Briggs: Now, Your Honor, he preaches louder than he's talking now. I've asked him to speak up so I'll try to remind him of that.
Direct examination by Mr. Briggs:
Q: Why don't we just start first with your name and your position in the church.
[29 to page 106, line 1] A: My name is Johnnie Lee Clark. I hate Lee because my grandfather named me that but Johnnie Lee Clark. I am the Apostle and general overseer of the Rehoboth United Assemblies which is a part of Prophetic Saints International Fellowship where I am presiding (inaudible). And I'm also the pastor of Rehoboth Number Two. I'm the senior pastor of Rehoboth Number Two, Charleston, South Carolina.

Q: While we are at that point, I've got it written down further down; but is this an association of churches, Apostle Clark?
A: Each church is independent but we come together under the umbrella of Propheting Saints International Fellowship. Rehoboth or United Assembly stands on its own and every church that's under Propheting Saints stand on their own.
Q: How many churches are, let's say, associated with each other here in the state?
A: In the state? Here in the state we have three churches but total we have fifteen churches.
Q: In what other states?
A: Rhode island, Massachusetts, North Carolina, Georgia and here in South Carolina and Denver, Colorado.
Q: Is the church incorporated with the secretary of state?
A: Yes, it is. (inaudible). **A:** Yes. Rehoboth United Assemblies is --
Mr. Briggs: Your Honor, I want to be heard on that. I think they are suing the wrong people.
The Court: Well, I don't think now is the time to do that, Mr. Briggs, so let's proceed with the questioning.
Mr. Briggs: And just put it on the record and not explain it?
The Court: We'll do it *nunc pro tunc* later.
[page 107, lines 1-3] **Mr. Briggs:** Okay, that's fine. That's fine. I have no problem.
Q: (by Mr. Briggs) Brother Clark - is it all right if I call you Brother Clark?
A: That's fine, sir.
Q: People claim to be believers and that's what it all means. How many microphones in the church are amplified?
A: I believe three. I believe. I'm not sure.
Q: Help me now. Do you have - does the speaker have an amplified mike?
A: Well, sometime we all use the same mike.
Q: If you have a soloist, does that soloist have an amplified mike?
A: Yes.
Q: Now what would the third one be? Would it be - I'm not suggesting, I'm asking a question. -- for the choir or some other purpose?
A: The young lady that plays the organ. There's a mike at the organ.
Q: There is a mike at the organ so there's some amplification coming from the organ?
A: It's just - it's no amplification from the organ. The organ itself has a Leslie.
Q: Okay. So you are talking about if the organ player is singing she has a mike?
A: Yes.
[page 108, lines 1-3] **Q:** Is there any kind of mike associated with or attached to the drums?
A: No, sir.
Q: Has there been any basic change in amplification system since 2012?
A: No, sir.
Q: Now we might as well be fair about this. I'm not going to ask that question. How many members do you usually have in a normal weekly service, pastor?
A: Since this situation about thirty members come to church.
Q: I attended a service once when you had an outside speaker and I don't remember where they came from but they actually brought a bus and they had their own choir. As I recall, and I'm asking a question, did you have a full house that night?
A: Yes, sir.
Q: And how many folks would you have seated in your auditorium when you have a full house?
A: About one seventy-five.
Q: Do you know of your own personal knowledge, Apostle Clark, whether any of your members have been trespassing onto the next door neighbor's property?
Ms. Mangum: Objection, Your Honor.
The Court: Sustained.
Mr. Briggs: What was the objection?
Ms. Mangum: Relevance.
[page 109, lines 1-3] **The Court:** Objection to relevance. Again, we are not here for trespassing, we are here for noise.
Mr. Briggs: Okay. Thanks for reminding me.

Q: (by Mr. Briggs) On the one testimony there about somebody, quote, crawling out of a window and then being on the Ellis property, do you have any personal knowledge about that?
Ms. Mangum: Objection, Your Honor.
The Court: Sustained.
Mr. Briggs: Your Honor, it was testified to.
The Court: I think I sustained the objection the first time around to it.
Mr. Briggs: Okay.
Q: (by Mr. Briggs) Have you received any reports from the police about decibel readings with regard to the citation you've gotten?
A: Reports. Only one citation but I don't remember what he said the decibel reading was.
Q: When you get a citation, do you get a copy of an incident report or not?
A: No, sir.
Mr. Briggs: Your Honor, just so the court knows, many of those incident reports were attached to the affidavit in the civil matter.
Q: (by Mr. Briggs) To your personal knowledge have either Mr. Ellis or Ms. Callahan accompanied the police when they served a citation? Have they been inside your church as far as you know?
[page 110, line 1] A: No, sir.
Q: Have you had any policeman explain to you, quote, how much noise is too much?
A: No, sir.
Q: Is it clear that the church was in operation at the time Mr. Ellis bought the house next door to you?
A: Yes, sir.
Q: Did any of your people - did you greet him or did you see him eyeball to eyeball before Ms. Callahan moved over there?
A: Just a couple of times out on the front porch upstairs.
Q: You just saw him. Did you all acknowledge each other?
A: Yes, we spoke. Just hello, how you doing. And then I know one Sunday --- it wasn't a Sunday. I was going in the church to take care of some business one day and he said to me I enjoy y'all's service. He says sometimes I sit on my back porch and listen to you. Those was his words.
Q: Okay. He's already testified that he bought the house in 2009 and on cross examination I think he said he actually moved in with Ms. Callahan in 2011. That would make it three years and I had thought he had said four years but that's beside the point. Did you all have any complaints from him the first year he owned the house?
A: No, sir.
Q: Did you have any complaints from him the second year he owned the house?
A: No, sir.
[page 111, lines 1-2] Q: Did you have any complaints from him the third year he owned the house?
A: No, sir.
Mr. Briggs: Your Honor, I'm going to ask this question. I think you've already said it's irrelevant but I want to put it on the record.
Q: (by Mr. Briggs) Is the church considering any kind of modification --
Ms. Mangum: Objection, Your Honor.
The Court: Sustained.
Mr. Briggs: I proffer that, Your Honor. I've got two or three questions following that up, Your Honor, and I'm not going to ask those, of course.
Q: (by Mr. Briggs) Apostle Clark, can you hear noise coming from Finlay Park when they have a rock bank over there?
A: Yes, you can. Yes, sir.
Q: Have you had any complaints from anybody else in the neighborhood except for Ellis and Callahan?
A: No, sir.
Q: We're talking about noise now.
A: No, sir.
Q: Do you need to consult with me on anything else you think we had talked about before?
A: No, sir.

[25 to page 112, line 2] **Mr. Briggs:** Your Honor, I just reserve the right to call *[page 112]* him if it's needed for rebuttal because he's a key witness. That's all I have.
The Court: Yes, sir. Yes, ma'am.
Cross examination by Ms. Mangum:
Q: Mr. Clark, you mentioned that there are three sources of amplification at your church? Two mikes and an organ, is that correct?
A: Well, it comes with a Leslie. All organs, all Hammonds come with a Leslie.
Q: And you testified that the drums -
A: They are not miked.
Q: How about an electric guitar?
A: We don't have an electric guitar in our church.
Q: You've never had an electric guitar play in your church?
A: We've had people come there to play a guitar but we do not have electric guitar.
Q: So people that have come and played an electric guitar, has that been amplified?
A: Yes.
Q: Have there been other instruments that have been brought to the church by other people that are played, that are amplified?
A: No, just electric guitar.
Q: Has anybody else brought a drum set with amplification into your church?
[page 113, line 1] **A:** No.
Q: Do you have a keyboard with an amplifier?
A: We have a keyboard but it's very seldom played.
Q: Does it have an amplifier? Has it been amplified?
A: I don't know because I'm not a musician and I don't know.
Q: Is it possible that the keyboard is also amplified?
A: I'm not gonna say it's possible. I just don't know.
Q: You testified just a minute ago that the police had never explained to you how much noise was too much.
A: Correct.
Q: Did Officer Griggs talk to you about turning the volume down?
A: He did. And we did.
Q: Did he talk to you about the noise was unreasonable?
A: He just said you need to try to accommodate your neighbor and turn the noise down. And I went in the church and I gave the musicians the signal to lower it down.
Q: After the citation had been issued?
A: Yes.
Q: Did officer - did Captain Marsh talk to you about excessive noise?
A: He did.
Q: Didn't he make suggestions about how to lower the excessive noise?
A: He did.
Q: And what suggestions did he give you?
[page 114, line 1] **Mr. Briggs:** Your Honor, we've already excluded those?
The Court: Yes. Just the fact that he gave them is sufficient.
Ms. Mangum: Your Honor, I believe the defendant testified the police never explained about how much noise is too much and so I think that directly relates to what is too much noise.
The Court: But possible ways to cure this is not too much noise, it's just the possible way to cure it. I think that's a different (inaudible).
Mr. Briggs: One is a definition and the other is how you might go about obtaining I think as you go.
The Court: Yeah, I'm not gonna allow it.
Q: *(by Ms. Mangum)* Is it fair to say that preachers, pastors should be concerned with members of their community in their neighborhood?
A: Exactly.
Q: And the welfare of the families in those neighborhoods?

A: I believe so.
Q: And were you aware that the noise was disruptive to members of the neighborhood?
(21 to page 115, line 4) A: After we got citations and we - let me say this. We've tried all we could to accommodate with the noise. As they say we are Apostolic Pentecostal Church. We praise the Lord differently than most, quote, unquote, traditional churches. We sing, we shout, we clap our hands. You might even see some of them run. Because of my *(page 115)* illness and I'm waiting for my healing, the day I get my healing I may run up and down Laurel Street 'cause that's just how we believe and we thank the Lord for what he's done for us. But that's our way of worship. That's our forum.

Q: But would you agree that the noise that was coming from your church was disruptive to your next door neighbors?
A: I can only say what they say.
Q: Did you make any attempts to go to their house and --
A: Oh, yes. One Sunday I had the elder come with me. I went there. They were home and I know they were home. Knocked on their front door, nobody answered the door. We stood there about five minutes and I knocked, rang the bell.

Q: So over the course of two years and the numerous, numerous, numerous citations that have been issued, one Sunday you knocked on the door and nobody answered. Did you make any other attempts to try to speak to them about the noise?

A: Well, the previous lawyer told me don't interact, leave it alone.
Q: Prior to any of that happening?
A: No. No.
Q: Were you aware that there was a child living next door to the church?
A: Never seen him but one time recently this summer.
Q: Weren't you aware that there was a child living at the home?
A: Just this summer.
(page 116, lines 1-3) Q: Were you aware that your music went on until ten o'clock at night sometimes, ten-thirty at night?

A: No, ma'am. No, ma'am, because I gave the church instructions because from my understanding with my previous lawyer that the "b" clause of that code had to ten p.m. and what we made sure about nine-thirty everything was cut down.
Q: So if we had - if there was a video that showed that after nine-thirty there was --
Mr. Briggs: Asked and answered, Your Honor.
The Court: No. Overruled. Go ahead.
Q: *(by Ms. Mangum)* If there is video that shows that after nine-thirty there is music coming from your church?
A: That could have been a possibility. I wasn't there.
Q: But --
Mr. Briggs: Your Honor?
The Court: No, it's --
Mr. Briggs: If it.
The Court: It's overruled.
Ms. Mangum: Your Honor, that's all the questions I have.
The Court: Okay.
Mr. Briggs: I've just got one follow-up.
The Court: Yes, sir.
Mr. Briggs: To what she asked. (Pause.) The Court: Anything else, Mr. Briggs?
(page 117, lines 1-2) Mr. Briggs: No, Your Honor. I didn't write it down. I'm through. (Witness to the side.)
The Court: Okay. Thank you, sir. Will you call the next witness, please, sir.
Mr. Briggs: Yes, Your Honor. We are going to call Dotty Clark.
Harriet J. Clark, after being duly affirmed by the court, testifies as follows:
Direct examination by Mr. Briggs:
Q: Ma'am, would you give us your name and position in the church, please?
A: Dr. Harriet J. Clark.
Q: And what is your role in the church?
A: I am the pastor and first lady.
Q: First lady. **And do you know from your own personal knowledge whether the church is incorporated with the secretary of state?**
A: Yes.
Q: I won't go any further. And you heard Apostle Clark talk about the association. You are familiar with all those other churches, are you?

[24] A: Yes.
[25 to page 118, line 1] Q: I'll just ask you, I'm not going to repeat everything; but what is normal attendance to a weekly service, ma'am?

[2-3] A: Sometimes twenty, sometimes no more than thirty. Since all this has been going on, we've had a decline in membership.

[4-5] Mr. Briggs: Your Honor, I'm going to avoid the problem we had before I think.
[6-7] Q: (by Mr. Briggs) Where do most of the members park when they go to church?
[8] Ms. Mangum: Objection, Your Honor.
[9] The Court: Yes. Sustained.
[10-14] Q: (by Mr. Briggs) Dr. Clark, have you had any conversations with any of the police - I'm talking about a substantive conversation about why they are giving you a citation or whether they took a decibel reading, that kind of thing, not just whether you talked to him about receiving a citation?
[15] A: No.
[16-18] Q: I'll ask you those questions I asked your husband. Did y'all have any noise complaints the first year Mr. Ellis owned the house next door?
[19] A: No.
[20-21] Q: Did you have any complaints the second year he owned the house?
[22] A: No.
[23] Q: Did you have any complaints the third years he had his house?
[24] A: No.
[23 to page 119, line 1] Q: Is it true that you had complaints once Sherry Callahan moved in over there?
[1] A: My God, yes.
[2-3] Q: Dr. Clark have you had any conversations with either Mr. Ellis or Ms. Callahan?
[4] A: Only in an arbitration.
[5] Q: Okay. Mediation, wasn't it?
[6] A: Mediation.
[8-10] Q: And was that - I'm asking a question because I don't even know. Was that called by the homeowners association or the lawyers or who set up that mediation?
[11] A: I believe the lawyers.
[12] Q: Did you all attend that meeting?
[13] A: Yes.
[14] Q: And can you tell us how long that meeting lasted?
[15] A: Just a few minutes.
[16] Q: So nothing was resolved in that mediation?
[17] A: No.
[18-21] Q: Dr. Clark, you and your husband are under medical care right now. I'm not going to get into that but y'all had meetings most of next week. Did you have a guest speak every night or did one of you speak one or two nights?
[22] Ms. Mangum: Objection, Your Honor.
[23] The Court: Yes, I'm going to sustain it.
[24-25] Q: (by Mr. Briggs) Do you know about any complaints about noise from your church from any other neighbors?
[page 120, line 1] A: No.
[2] Mr. Briggs: Nothing further, Your Honor.
[3] The Court: Thank you, sir. Ms. Mangum.
[4-5] Cross examination by Ms. Mangum:
[6] Q: Ms. Clark, you mentioned that you had a decline in membership?
[7] A: Yes.
[8] Q: Based on what?
[9] A: Police coming to the church.
[10] Q: And so how many - what was your membership prior to this?
[11-13] A: Sometimes fifty, sometimes during a week night thirty. And most of our senior citizens since the driveway have been taken up they cannot access the church.
[14-15] Q: So that's not related to the noise violations that you've lost membership?
[16] A: Yes. The police come because of the noise.
[17-19] Q: But you just referenced that there is an issue of a driveway and so you have people that can't get in. Would you agree that those people --
[20] A: That's one or two.

Q: That's not those people are not related to what's --
A: No.
Q: Okay. And so you went from fifty down to?
A: It might be a little more than that. I'm just estimating.
Q: What is your membership now?
[page 121, line 1] A: What do you mean where is my membership?
Q: What's the number? It was at fifty.
A: Sometimes twenty, twenty-five, thirty. It varies.
Q: Do you have any records with you today that show that members have withdrawn from your church?
A: No, I wouldn't have brought that with me. I wouldn't have thought to bring that with me.
Q: Do you have those records that show members?
A: No, I can contact them and get the signatures.
Q: Did you bring any of them here today to say that this has disturbed the church?
A: No, I didn't think I needed them.
Q: You mentioned that you attended a mediation with the neighbors that lasted just a few minutes?
A: Yes.
Q: Why did that last just a few minutes?
A: Because Sherry Callahan and I got into it over the driveway.
Q: And was the mediation in reference to noise violations?
A: The whole thing. The whole matter.
Q: The whole issue. And because of a problem you had with Sherry you left the mediation?
A: Yes.
Q: And you were there for how long?
A: Thirty minutes maybe.
Q: Did you leave by choice?
[page 122, line 1] A: Yes.
Q: Nobody forced you to leave that meeting?
A: No.
Ms. Mangum: That's all the questions I have, Your Honor.
The Court: Anything else, Mr. Briggs?
Mr. Briggs: I've got one follow-up that came up, Your Honor.
Redirect examination by Mr. Briggs:
Q: Dr. Clark, do you know of your own personal knowledge now whether any of these members who left the church were concerned about the citations?
A: Yes.
Mr. Briggs: Nothing further, Your Honor.
The Court: Ma'am, thank you. You may step down. **(Witness to the side.)**
The Court: Call your next witness, Mr. Briggs.
Mr. Briggs: I've got one more witness. Looks like we are gonna finish. Can you bring Mr. Thomas Borders in, please. Will be real short, Your Honor.
Thomas Russell Borders, after being duly sworn by the court, testifies as follows:
Direct examination by Mr. Briggs:
Q: Give us your full name, please.
[page 123, line 1] A: Thomas Russell Borders.
Q: Is it Borders, b-o-r?
A: B-o-r-d-e-r-s (spelled.).
Q: And do you have a role in the church, Mr. Borders?
A: Yes, I do.
Q: And what is that role?
A: I'm an elder.
Q: You're an elder?
A: Yes, sir.
Q: Do you all have trustees in your church?

A: No, sir.
Q: Let me have your list since we worked those questions up and I didn't bring mine. Okay. On one day when I went over there we did some decibel readings.
Ms. Mangum: Objection, Your Honor.
Q: (by Mr. Briggs) At your window --
Ms. Mangum: Objection.
The Court: I think I'm going to have to hear the question and maybe even the answer.
Mr. Briggs: Your Honor, I'm just going to ask him what we got in one place.
The Court: Let's hold on. We may or may not get into that. I think we just need to talk about it a minute. Let me excuse you folks for one minute, please. (Jury leaves the jury box.)
[page 124, lines 1-2] The Court: Mr. Briggs, either you or the witness tell me under what conditions you took the decibel meter readings.
Mr. Briggs: We took it from the window closest to them and apparently there was not any preaching going on because we got a twenty-five reading, Your Honor.
The Court: Was there any music being played?
Mr. Briggs: There was some music, yes. And then I --
The Court: How do we know it was the same level, high or low, than the nights they complained of?
Mr. Briggs: We don't know. And then I showed Mr. - showed Thomas what a normal conversation reading would be done so we took that just so we would know to compare. That's why I'm so stuck on numbers.
The Court: You had a meter?
Mr. Briggs: Yes, sir. I have it right here. I could do it again if the court thought it was of any value.
Ms. Mangum: Your Honor, I have two issues. First of all, this is not any of the dates that are before the jury right now. It's just a random reading on a day that they've decided to take. Second of all, I think that counsel is putting himself in the place of a witness. He took the measurements.
Mr. Briggs: No, I didn't. He took the measurements.
Ms. Mangum: Well, he was with him and provided the-
Mr. Briggs: I provided the meter.
[25 to page 125, line 1] The Court: Yes, I agree on the church. It wasn't on the days and we don't know that it's the same conditions.
Mr. Briggs: It just shows it's high sometimes and low sometimes.
The Court: It's just not comparable. Now as far as this figure, the jury - first of all, I don't even think the meter reading for your officer was ever testified to by the officer. If it was I was sleeping when it happened because I don't remember hearing it.
Ms. Mangum: He testified as to one reading.
The Court: He said there was one but I don't remember him ever saying what it was.
Mr. Briggs: He didn't ever say the number, Your Honor.
The Court: So that being the case, do you think the number is in evidence? I don't think it is. I kept waiting for it and I didn't hear it.
Ms. Mangum: No, Your Honor. The decibel readings are not part of the City's case.
The Court: If the reading was in evidence then maybe Mr. Briggs could show this one to show a normal conversation is so and so but since the reading is not in evidence then I don't think it's relevant what normal conversation is. So, Mr. Briggs, I am going to deny you the right to put either one of them in.
Mr. Briggs: I hear you, Your Honor, and I reserve my objection.
The Court: Okay.
Mr. Briggs: I've got just one question to him, Your Honor.
[page 126, line 1] The Court: Let's bring the jury out real quick.
Mr. Briggs: I've got just one question. (Jury returns to the jury box.)
The Court: Thank you again, ladies and gentlemen. Yes, sir.
Q: (by Mr. Briggs) Mr. Borders, have you ever had any conversations with Mr. Ellis or Ms. Callahan about their complaints?
A: No, sir, except for when their driveway was removed.
Mr. Briggs: Okay. Your Honor, that's really --

Q: (by Mr. Briggs) Was it before complaints just so we know the context?
Ms. Mangum: Objection, Your Honor.
The Court: Yeah, I don't want to get into that.
Mr. Briggs: You can strike that if you want.
The Court: Thank you, sir.
Mr. Briggs: Nothing further. That's the defendant's case.
The Court: Do you want to cross?
Ms. Mangum: I don't have any questions, Your Honor.
The Court: Okay. So you rests, Mr. Briggs?
Mr. Briggs: You can leave. (Witness to the side.)
(24 to page 127, line 1) The Court: Good time for lunch. I'm going to excuse you in just a minute. The Coke and cracker machine is downstairs in the [page 127] drive-through. I'm going to suggest you'd be better off if you got it and brought it back up here and all ate together. People might be walking around talking. We don't have any conference rooms and it's just safer for y'all to come back up here. While you are at lunch, don't call anybody. I'm sorry. And don't discuss the case among yourselves. We'll come back and do what's called argue and charge. Thank you. I'll excuse you to go get your magnificent lunch.
(Jury leaves the jury box.)
The Court: We'll take about a fifteen minute break.
Mr. Briggs: I just want the record to show and I'm making this as for as my reason for wanting the decibels. I think it clearly shows that if you want to find the level of noise there is a way to do it and we did it and they could have done it, too.
The Court: Yeah.
Mr. Briggs: I want that in the record.
The Court: I think that's a political issue but I don't think it's a legal issue in the case.
Ms. Mangum: Would you accuse me of being a politician, Your Honor?
The Court: No, no, no. City council is the place to take that up. I think that's where those kind of things are considered. If there's some other way they choose to do it then it's up to City Council to choose to do it.
(25 to page 128, line 1) *Ms. Mangum:* Your Honor, I have a couple of matters of law. Do you want to take a break and start with those?
The Court: No, let's go ahead right now.
Ms. Mangum: Okay. I think that the defendant opened the door when he said that no other neighbors ever complained.
The Court: I understand.
Ms. Mangum: And I do have another neighbor that I did not call but I would like to be able to call her as a rebuttal witness. She did call the police and she has had problems with noise in general from the church.
The Court: Okay.
Mr. Briggs: The question wasn't whether she called the police. The question was whether they knew of any others.
The Court: How would Mr. Clark know that she had complained?
Ms. Mangum: Well, his exact statement was no other neighbors ever complained.
The Court: To the best of his knowledge. How would he know?
Ms. Mangum: I don't know but that surely gives the jury the impression that it's totally my victims that have the problem and that simply is not the case.
The Court: So you are not putting this up to try to show that he falsified his testimony. You are trying to put it up to show there are other witnesses. You could have put them up in your case in chief to do that.
[page 129, lines 1-7] [redacted]
Mr. Briggs: Oh, come on now.
The Court: But how would he know other folks filed a complaint. I mean if you can show me how he did then I'll be glad to listen to you, but I don't know how he would know. You know, we had a little C.L.E. on judicial discipline. We were told that when people file certain kinds of complaints against us and they are just totally unfounded they just put them in an envelope somewhere. They don't even notify us. So if I want to go up there and look at judicial discipline to see if I had any complaints that were totally unfounded I could but I don't know because I've never cared. The ones I get notified about are the ones I care about.
Ms. Mangum: Would it be proper to call Tim and Sherry or Tim or Sherry back up to ask whether they know of any other complaints?

[12:23] **Mr. Briggs:** That's hearsay, Your Honor.
[12:23] ***Ms. Mangum:*** No, whether they know. I mean it's clearly not but ... I was trying to keep it as simple --
[12:23] **The Court:** I think all of that could have been --
[page 130, lines 1-3] ***Ms. Mangum:*** The defendant also mentioned that there was no noise after nine-thirty. We have many videos that show otherwise.
[12:23] **The Court:** And I'm considering that but he also said it's possible I wasn't there. So how are you going to show he was there. Have you got his voice on one of those videos?
[12:23] ***Ms. Mangum:*** I would need a little bit of time to go back and look at those.
[12:23] **The Court:** I mean he gave an out. He said possible I wasn't there. That was his testimony. So if he wasn't there he wouldn't know.
[12:23] ***Ms. Mangum:*** It's my understanding that it's very rare that the defendant is not there. He is the primary preacher of the church.
[12:23] **The Court:** If you've got a video with audio with his voice on it past nine-thirty then I'll give that serious consideration to letting that in. But if it's not his voice, I don't know how you are going to show he was there with that knowledge. He explained. He said maybe I wasn't there. So you're not coming back and impeaching him because he left an opening. That is maybe I wasn't there so it's not impeaching him when he didn't say something false.

[12:23] ***Ms. Mangum:*** I think he made it clear to the jury, Your Honor, that at nine-thirty they were quiet.
[24 to page 131, line 4] **The Court:** When he was there? When he was there. Now if he hadn't put that little phrase in there maybe I wasn't there I *[page 131]* think I'd be letting you let it in. But you can't impeach him when he left himself an out. He didn't say categorically that there wasn't any, just maybe I wasn't there. This would have to be impeachment testimony because otherwise it would come in in the case in chief.
[12:23] ***Ms. Mangum:*** I would purely be introducing it as impeachment.
[12:23] **The Court:** Yeah. And so since he left himself an out I don't think that's impeachment. Impeachment means he told a falsehood, not that may be he's wrong.
[12:23] ***Ms. Mangum:*** If I'm able to find video in the next fifteen minutes that shows that clearly you can hear him.
[12:23] **The Court:** Then I'd like (inaudible). We'll give it serious consideration.
[12:23] ***Ms. Mangum:*** Okay. What if I have a video that has speaking from my victims that my Apostle Clark arrived at --
[12:23] **The Court:** I'll listen to that. I'll consider it.
[12:23] ***Ms. Mangum:*** Also, the defendant referenced a conversation with Tim Ellis in which he said he always enjoyed the services or something to that effect. I would like to recall Tim on that point.
[12:23] **The Court:** I think you can. Yeah, I think you can.
[12:23] ***Ms. Mangum:*** I would like the opportunity to. I'm not sure I'll take advantage of it but ..
[12:23] **The Court:** Yeah, I think you can. All right. We'll be in recess for about fifteen minutes or so.
[132, line 1] (luncheon recess) [1] (Court resumes.)
[1:31] ***Ms. Mangum:*** Your Honor, we are still trying to look through the video. I don't know if you would be inclined to give us a little more time to do that. There are definitely statements mentioning after nine-thirty and that they were given to Johnnie Clark so I would assume he was there. It's just a matter of looking.

[1:32] **The Court:** Well, you know, you say that he was there. The way Officer Griggs described it I don't think he ever handed him one in person.
[1:32] ***Ms. Mangum:*** But he observed him in the pulpit.
[1:32] **The Court:** Okay, he observed him. All right.
[1:32] ***Ms. Mangum:*** They just out of respect they didn't interrupt.
[1:32] **The Court:** Well, I agree. I wouldn't want to go interrupting somebody's service either.
[1:32] **Mr. Briggs:** So is she going to prove he's human and he made a mistake, Your Honor? What's the value of this?

[79 to page 133, line 2] ***Ms. Mangum:*** And, Your Honor, also during the break it came to my attention through the victims that when the defendant testified that he didn't know that there was a child in the home until I think this summer he said. In December, since 2012 there were a group of emotions that were played by Harriet Terry and the defendant was subsequently found guilty on those citations and at that hearing the video with her son in his bedroom was played. So he *[page 132]* affirmatively was on notice as of 2012 that there was a child in the home.

[2:43] **The Court:** Who are you going to call to testify about that? How are you going to introduce that?
[2:43] ***Ms. Mangum:*** I can call my victims to testify as to that.

Mr. Briese: No basis for it, Your Honor.
Ms. Mangum: It's impeachment evidence. And given --
Mr. Briese: Why are we getting into character all the time?
The Court: Well, --
Mr. Briese: This is not about character.
The Court: Impeachment is relevant, of course. I haven't seen this quoted in a long time but back when I was assistant solicitor -- it's been a while -- a lot of the judges, and I think there's case law to back this up, questioned whether you could impeach on a collateral matter because otherwise basically you try your whole life every time you take the stand. All right. Let's do this. Let's let you go ahead and call your witnesses and say that conversation either didn't go that way or didn't happen at all - Ms. Callahan or Mr. Ellis. All right. I think credibility is an issue.
Ms. Mangum: And, Your Honor --
(21 to page 134, line 1) The Court: I think credibility is an issue. So if one of your other witnesses can be called just for the purpose of testifying about what happened at the hearing in front of Judge Hanna, not about other things, I think if we can limit it to that then I think we [page 134] can do it.
Ms. Mangum: I can get that in through Tim Ellis I believe.
The Court: Okay. Just call one person. That's good. I like that. Do you have somebody else looking at the videos?
Ms. Mangum: I do.
The Court: You said we.
Ms. Mangum: And I also have somebody from my office that's on their way down.
The Court: Okay.
Mr. Briese: Can I ask him if he knows everybody he's met in the last three years, four, five, or three years ago?
The Court: Well, when your client was asked did he know there was a child in the house it would have been okay for him to say I don't remember when I found out the child was there but that wasn't his answer. He had a direct answer with a distinct time. If he had just said I don't remember then there's nothing to impeach there. But if you give a specific answer then you should be held to that specific answer. I mean he gave himself an out on that other thing. He didn't give himself an out on this one. That's the way it works. How many videos do you have to go through and how long will it take to go through them?
Ms. Mangum: Your Honor, I believe that we have three videos that include Mr. Clark and include the time frame that go past what he said so it's just a matter of --
The Court: How long is that going to take?
(page 135, lines 1-2) *Ms. Mangum:* I don't anticipate that I will take very long.
The Court: You sound like a lot of people in my life when I ask them how long something is going to take.
Ms. Mangum: I'm not back there right now so I'm not sure where they are in the process.
The Court: Your best guesstimate.
Ms. Mangum: I would say if you could give us twenty minutes.
Mr. Briese: Your Honor, if one of their witnesses has seen those videos they can say on this day he was still preaching at such and such a time, you know.
The Court: You wouldn't have been looking for that specific issue necessarily and now you are. Let's do this. Let's bring the jury out and let's go ahead and call Mr. Ellis and when that's over I'll send the jury back and we'll see what we want to do. Is that okay?
Ms. Mangum: Your Honor, let me ask you also. When Mr. Ellis is on the stand one of the incidents that the defendant pled guilty to on that date when Mr. Ellis was there involved a violation that took place from eight-thirty until nine forty-five p.m. the defendant pled guilty to that.
The Court: Unless you have a transcript and somebody specifically mentioned the time period.
Ms. Mangum: No, it's on the incident report.
(page 136, line 1) The Court: That doesn't make it true, does it?
Mr. Briese: Bench trial. He didn't plead guilty, Your Honor. It was a bench trial.
Ms. Mangum: He was found guilty, I'm sorry.
The Court: Still unless you've got a transcript that specifically mentions the time he was found guilty of noise ordinance, I don't know that a time goes with that.
Mr. Briese: What's fifteen minutes anyway?
The Court: Well, it's impeachment and impeachment is normally relevant.

[11-12] [redacted]: But it's character assassination of the worst kind. Your Honor, and I'm going to put that on the record, too.
[13] **The Court**: All right.
[14-18] ***Ms. Mangum***: So I will not ask about the times associated with those guilty --
[19-25] **The Court**: I don't know that the time is an element of the offense in any way, shape or form. If you had a transcript and the transcript showed they testified to a certain time. But you testified to a stretch of time. I mean Judge Hanna could have found him guilty of the first minute of that time or the last minute of that time. We don't know which one. So unless we know the time - and again if they testified to a length of time then we'll never know which part she believed and which part she didn't and which part she found him guilty of.

[23 to page 137, line 1] ***Ms. Mangum***: Well, Your Honor, if the officer left at 2211 after issuing a citation, isn't that --
[2-9] **The Court**: What time he left. What time did the violation take place is what's important. All right. Let's bring them out and we'll recall Mr. Ellis and go from there. [10] **(Jury returns to the jury box.)**

[15-18] **The Court**: Well, folks, I was wrong. We do have a little more work to do before we get to argue and charge. I apologize for that. Under certain circumstances you are entitled to recall a witness or call rebuttal witnesses and we have one of those circumstances. Yes, ma'am.
[11-12] ***Ms. Mangum***: Your Honor, the City would call Tim Ellis back to the stand.
[13-14] **The Court**: Sir, you are still under oath. You don't need to take the oath again, sir.
[15-16] **Tim Ellis, having been previously sworn by the court, testifies as follows:**
[17-18] **Direct examination by Ms. Mangum:**
[19-23] ***Q:*** Mr. Ellis, I just want to reference two comments that were made by the defendant when he was on the stand earlier. He testified that he had a conversation with you in which you indicated that you enjoyed his services.

[23 to page 138, line 1] **A:** That is absolutely untrue. I've never had a conversation with Mr. Clark. Nothing more than a friendly possible wave and hello in a neighborly way until we were at the mediation. We attempted to *[page 138]* have conversation and they chose to walk out.
[2-6] ***Q:*** He also on the stand said that he was not aware that there was a child living in that home until this summer. Do you remember that testimony?
[7] **A:** I do.
[8] ***Q:*** Isn't it true that in the --
[9] **Mr. Briggs:** Leading.
[10] **The Court**: Sounds leading, is it true. It does. Sustained.
[11] ***Ms. Mangum***: I'll rephrase, Your Honor.
[12-21] ***(by Ms. Mangum) Q:*** Were you in court with the defendant on December 5th, 2012?
[22] **A:** I was.
[23] ***Q:*** And what were you in court for?
[24] **A:** Noise violations.
[25] ***Q:*** And at that time was video shown of those violations?
[26] **A:** Absolutely.
[27-28] ***Q:*** And one video in particular, was one of those videos with Sherry's son?
[29-33] **A:** It was. It was from his bedroom, in his bedroom with his covers over his head because he couldn't sleep.
[34] ***Q:*** It was nighttime?
[35] **A:** It was nighttime.
[36] ***Q:*** Was Mr. Clark present at that trial?
[37] **A:** He was.
[38] ***Q:*** And did he also see the video?
[page 139, line 1] **A:** He did.
[2] ***Q:*** And did he hear the testimony about Sherry's son?
[3] **A:** He did.
[4] ***Q:*** Being in the home at that point?
[5] **A:** Absolutely.
[6] ***Q:*** In 2012?
[7] **A:** Absolutely.
[8] ***Q:*** So he's known since at least 2012 that there was a child?
[9] **Mr. Briggs:** Leading.

The Court: Yeah, leading. Sustained.
Ms. Mangum: That's all I have.
The Court: Mr. Briggs, do you wish to ask any questions, sir?
Mr. Briggs: Yes, just two, Your Honor.
Cross examination by Mr. Briggs:
Q: Mr. Ellis, you did not talk to Apostle Clark as to whether or not he perceived and understood all that discussion about whether or not it was in fact Sherry's son, did you?
A: Rephrase that.
Q: You didn't talk to him and find out if he really knew whether that was her son, did you?
A: Personally, no. This was brought into the court.
Q: But it was apparent to those who were really listening, is that what you are testifying to?
(page 140, line 1) A: It was apparent to everyone in the courtroom.
Q: I want to go back to the discussion we had about who made the telephone calls.
A: Okay.
Ms. Mangum: Objection, Your Honor.
The Court: Yeah. Mr. Briggs, you can only cross examine him on the new testimony, not on old testimony.
Mr. Briggs: Okay. Nothing further, Your Honor.
The Court: Mr. Ellis, you can step down, sir. (Witness to the side.)
The Court: All right. Ladies and gentlemen, I'm going to inconvenience you about another ten minutes. There's a reason but I need to do that. I ask you to go back. Don't discuss the case. We'll come back soon.
(Jury leaves the jury box.)
The Court: Do you want to check on the progress of that and maybe give me a short report?
Mr. Briggs: Your Honor, if I could just handle one thing because I know she would object and I suspect you will –
The Court: Well, let's don't talk about it while she's gone. Let her go out for a second. We'll talk about it when she comes back. (Pause.) The Court: How are we doing?
(25 to page 141, line 1) *Ms. Mangum:* Your Honor, they are on their way from my office.
The Court: It looks like this is going to take more than twenty minutes. What do you think the video is going to show?
Ms. Mangum: That Mr. Clark was in the church with the noise coming out of it after nine-thirty at night.
The Court: Okay. And about what time do you think it's going to be?
Ms. Mangum: I believe it's ten-thirty.
Mr. Briggs: What if it's not music?
The Court: I'll have to listen to it to see.
Ms. Mangum: I don't know there's a requirement that there's –
The Court: No, we'll just have to listen to it. Don't be speculating, we'll see what it is. I am concerned about the time because I'm concerned about the jury. They have been very patient with us today.
Ms. Mangum: Your Honor, we'll just agree to move on without the video.
The Court: Okay. So does that conclude your case?
Ms. Mangum: It does, Your Honor.
The Court: So we are ready to argue and charge?
Ms. Mangum: We are.
The Court: And you want to open and close or just close?
Ms. Mangum: I'll just close.
(page 142, lines 1-7) The Court: Okay. Mr. Briggs, we are going to bring them out and argue and charge. Any motions at this time, sir? Any new motions?
Mr. Briggs: Yes, Your Honor. I don't think it's a motion but we need to talk about the incorporation issue.
The Court: Well, I'll let you put it on the record. I'm not going to let you argue it.
Ms. Mangum: That's fine.
The Court: I'm not going to stop you putting it on the record, I'm not going to let you - stop you from putting it on the record but ...
Mr. Briggs: Okay, that's fine. And I just want to again make my point about the - not being able to put the D.B. measurements because my point is if we could do it they could have done it, Your Honor.

[15-18] **The Court**: If they had done it, you could have perhaps rebutted it but they didn't do it so there's nothing to rebut when they didn't put it in.
[19] **Mr. Briggs**: Well, I just want to put that on the record
[20] **The Court**: Okay.
[21-24] **Mr. Briggs**: I don't expect you to change your mind or anything. I've got the request and I know you are going to say no but I'm going to ask it anyway. I think it would be good for you to charge the Beaufort ordinance, the new one.
[25] **The Court**: No, sir.
[page 143, lines 1-2] **Mr. Briggs**: I know but it's just one way of doing it, Your Honor. I want it to be on the record.
[1] **The Court**: Yes, sir, and I'll decline that request.
[2] **Mr. Briggs**: I know you would.
[3] **The Court**: Okay. Are we ready now for the jury? [4] **(Jury returns to the jury box.)**
[5-11] **The Court**: Thank you very much for your patience, ladies and gentlemen. We really appreciate it. We are going to what's called argue and charge. Each side gets a chance to address you and then I'll read the law to you. Mr. Briggs, you get to go first, sir.
[12-18] **Mr. Briggs**: Ladies and gentlemen, we want to thank you for your service and I know the City Attorney feels that way and I know the judge feels that way. It's a privilege but it's a duty, too, and we appreciate you all being here. What I want to remind you about on behalf of the defendants is remember that this is not just a question of noise, it's a question of what the First Amendment says and what free speech says.
[19-25] [redacted]
[1 to page 144, line 1] **Mr. Briggs**: You said -- No basis for it.
[2 to page 144, line 8] **The Court**: I think to a certain degree I'm going to let him talk. That doesn't mean that it's so. I will say this, ladies and gentlemen, and this is the law. In some states it is okay to argue jury nullification, that is, even though we believe the person did it *[page 142]* we are going to find him not guilty because we don't like it. In South Carolina that is not the law. You took an oath to follow the law so whether you like the law or not you enforce it, not guilty or guilty, whichever way it goes but your own personal feelings about the law are not allowed. You're a soldier here today, you do whatever your duty needs you to do. But we all recognize the importance of the First Amendment so I'm going to let him have a little short segment. You still have to do your job.

[9 to page 143, line 19] **Mr. Briggs**: [20-25] Since you raise the point, I hadn't even thought about that subject, okay? The point I'm making, ladies and gentlemen, is the judge will tell you what the law is so what you have to do is take the facts you heard, what testimony you believe, what you don't believe and apply the law that he says about it. But I just wanted to remind you that we are talking about the First Amendment, not the tenth or anything like that. But what the City wants you to do is for you to say that two citizens can trump thirty church members, the church itself and these constitutional protections. They want you to forget about all those and, quote, protect the two citizens. Apparently all the citations came from complaints in a single room of the house, namely, the living room. [21-25] They have six rooms in that house. Why didn't the police take readings in those other five rooms? There had to be a room where you couldn't hear noise that at one time was thirty-five minutes. At other times it may have been more, other times it may have been less. *[25 to page 143, line 12]* My question is why didn't the police test those other rooms. In fact, *[page 145]* Captain Marsh said on a telling point that the decision of whether or not to give a citation was -- the police were influenced by the citizens' definition of too much. I'm sorry, you can't delegate that decision to a citizen. Now how many times they did that and how many times the police made their own mind up we don't know. Maybe the most misleading statement was the one the City Attorney said that, quote, there was noise from the church at all times of the day and night. We heard no testimony of early morning noise. We heard no testimony of all during the night. Now there's going to be an argument later about whether it was nine-thirty or ten-thirty or whenever it was but you can decide about that yourself but that statement influenced the exaggerated testimony of the complaining witnesses. [11-15] Your job is to decide whether a church through their leaders can be punished for praising God in a dramatic manner just to satisfy the likes of two neighbors. Remember now the final word is you have to be satisfied there was a violation of law without any reasonable doubt in your mind that the defendants are guilty and should be punished. Thank you.

[20 to page 145, line 3] ***Ms. Mangum:*** [20-25] We are here today because the City of Columbia has enacted a noise ordinance and it is the law in the City and the judge will tell you exactly what that ordinance says again. But it is the law and every citizen in this city must obey it. *[24 to page 146, line 2]* The law in terms of the noise, violation of the noise ordinance is clear that noise that is unreasonably loud that interferes with others right to quiet enjoyment is against the law. You've heard a lot of testimony today in a very short time and I just want to

briefly go through some of that with you. You heard from Tim Ellis and Sherry Callahan and they are a great study in the differences between men and women just in the way that they took the stand. [9-19] Tim Ellis very matter of factly told you the noise is unreasonable, it disturbs me, I am unable to do the things that I like to do in my home. You also heard from Sherry Callahan who was very emotional and she told you that the noise in effect had changed her whole life. Those are serious issues for these victims. After they worked all day and they both do, they come home to a house where they cannot watch TV, where they cannot work out of their living room, dining room, bedroom, second eating area, although the officer testified that he listened in the living room, and that was enough for him. You also heard testimony that it affected their entire house and their entire life. You heard from Officer Griggs who told you that the decision to cite these defendants was his and his alone based on the statute before him and his duty as an officer. [19 to page 147, line 2] And he found not once, not twice, but six times that these defendants were not following the law in our city. It's important to remember the dates of those citations because the officer came in February - I believe it was the 27th. I may have that wrong, maybe the 21st. But he came, he issued the citation and he had to come back the very next day. The defendants were on notice that they were in violation and they continued to violate the ordinance. They had no concern for their neighbors, they had no concern for their community. [9-25] You also heard from Captain Marsh today who told you that the City didn't want to issue the citations. He acted as a mediary. He tried to meet with the defendants to make some changes so that everybody could live in harmony which was really the point of this neighborhood to begin with. But the defendants refused to make any changes. [9-25] You also heard from the defendant himself who originally told you that he didn't even know there was a child living there. Well, we know through Tim Ellis that he absolutely did know. He was in court a year prior, maybe a year and a half and he was notified at that point that there was a child in the home. He knew there was a child, he saw the video where the child could not sleep and yet he continued to play music at such a level that he was cited seven additional times that are before you today. [17 to page 148, line 3] I want to go back to where we started at the very beginning of this. Tim Ellis and Sherry Callahan had a dream and they bought that house in that community. It was a brand-new neighborhood in downtown Columbia. They planned to raise their family there. They knew the church was there and they testified they were excited, they were glad. They thought they would be good neighbors. But that dream has gone horribly wrong and all they are asking today is for some relief. They are not asking that the church leave the property. They are not asking that the church [page 148] not be allowed to have services. They are simply asking that the church follow the laws in this city, and we are asking the same from you today. Thank you very much.

[4 to page 152, line 4] **The Court**: Okay. Ladies and gentlemen of the jury, you now have heard all the evidence in the case and the final arguments by the lawyers. My duty at this point is to instruct you as to the law. It is your duty to accept these instructions of law and apply them to the facts as you determine the facts to be. If anyone has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow. You should not single out any instruction alone as stating the law, but you should consider my instruction as a whole when you retire to deliberate. It is the duty of the judge to rule on the admission of the evidence, but the weight of the evidence is entirely for the jury and it is the jury's duty to weigh the evidence and to determine what the facts are from the testimony as it is heard from the witnesses. Hence, the jury must necessarily pass upon the credibility of the witnesses. In doing this you may take into consideration the witness's opportunity for observation, the witness's knowledge of the matters testified about, the witness's bias or prejudice, the witness's demeanor. In fact, anything which you, the jury, believes will help you determine whether a witness is telling the truth, the object being to find the truth whether it comes from a witness for the prosecution or a witness for the defense. You may believe one witness and disbelieve another. You [page 149] may believe one portion of a witness's testimony and disregard another portion of that same witness's testimony. Having determined the credibility of the witnesses and having concluded what the facts are in the case, it is your duty to apply the law as I charge it to you to those facts and thus arrive at your verdict. [9-25] You are to perform this duty without bias or prejudice to any party. The law does not permit jurors to be governed by sympathy, prejudice or public opinion. Both the accused and the public expect that you will carefully and impartially consider all the evidence in the case, that you will follow the law stated by the court and that you will reach a just verdict regardless of the consequences. [10-20] To constitute the crime charged, and I'll read you the ordinance again shortly, there must be the joint operation of two elements. One, an act forbidden by law and, two, an intent to do the act. Before a defendant may be found guilty of a crime, the prosecution must establish beyond a reasonable doubt that under the ordinance described in these instructions the defendants in this case were forbidden to do the act charged and that they intentionally committed the act.

[21 to page 150, line 5] The law presumes a defendant to be innocent of a crime and the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against an accused. So the presumption of innocence alone is sufficient to acquit a defendant unless the jurors are satisfied beyond a [page 150] reasonable doubt of the defendant's guilt. It is not required that the prosecution prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt that would make a reasonable person hesitate to act. You are to remember that a defendant is not to be convicted on mere suspicion or conjecture. [5-14] The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant. So if you, the jury, after careful and impartial consideration of all the evidence in the case has a reasonable doubt that either of these defendants is guilty then you must acquit one or both, the ones you can say you have a doubt about. If the evidence is on that razor's edge and you can't decide whether you have a reasonable doubt or not, then you do have a reasonable doubt and you would still find the defendant not guilty. But, of course, if the prosecution proves guilt beyond a reasonable doubt they are entitled to a verdict of guilty. [15-20] Let me read you the ordinance again. And it comes from **city code 8-67, subsection "c." It shall be unlawful for any person to operate or cause or permit to be operated any instrument or sound producing or sound amplifying device so loudly as to unreasonably disturb persons in the vicinity thereof or in such a manner as renders the instrument or device a public nuisance.** *[21 to page 151, line 13]* Now the verdict you reach must represent the considered judgment of each juror. In order to return a verdict it is necessary that all of you agree. Your verdict must be unanimous. It [page 151] is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to your own individual judgment. You must each decide the case for yourself but only after an impartial consideration of the evidence in the case with your fellow jurors. [8-21] In the course of your deliberations do not hesitate to re-examine our own views and even change your own opinion if you become convinced it was erroneous. Do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of another juror or for the mere purpose of returning a verdict. Remember at all times that you are not partisans, you are judges. You are the judges of the facts. Your sole intent here is to find the truth from the evidence in the case. [24-25] Now I'm going to send you back in just a minute. When I do, do not deliberate. Shortly thereafter I hope my court officer will deliver the verdict forms and the exhibits. When you get these, do deliberate. Now you've got seven charges, six against the defendant, Johnnie Clark, one against Ms. Harriett Clark. You are to consider them individually. You may find some guilty, some not guilty, all guilty, all not guilty. It's up to you but you do consider each individual charge on each individual date separately. I don't know who made this form up but let's ignore half the form. It says we find the defendant not guilty of - forget the "of" - we either find him not guilty - or her - or we find him guilty. So, Mr. Foreman, you would check the appropriate box, you would sign it and date it. *[page 152, lines 1-4]* Once you have reached a verdict on all seven cases, then you can knock on the door and we will bring you back out. Okay. So I am going to excuse you at this time. Do not deliberate until you get the verdict forms and the exhibits. [22] **(Jury leaves the jury box.)**

[6-7] **The Court**: Any objection to excusing the alternate? He shouldn't be deliberating with them anyhow.
[8-9] ***Ms. Mannum***: No, Your Honor. Thank you for your service. [10] **(Alternate juror is dismissed.)**
[11-12] **The Court**: All right. Any objections or additional charges?
[13] ***Ms. Mannum***: Not from the City, Your Honor.
[14] **The Court**: Mr. Briggs, are you okay with my charge?
[15-17] **Mr. Briggs**: No, no, objection and no exception, Your Honor. But I feel like they need some constitutional law and I would suggest a summary of the *Edwards* case, Your Honor. That's all I've got to say.

[18-21] **The Court**: Well, that case is certainly relevant to your motion, it was certainly relevant to my previous decisions on those motions but it's not for the jury. That would be for me. Hand them these and make sure they get the exhibits over here, too, please. [22] **(Jury deliberating.)**
[23 to page 153, line 1] **Mr. Briggs**: Your Honor, I still think I need to put the incorporation on the record.

[2-3] **The Court**: I'm not going to cut you off. I don't think it's relevant but you can certainly put it in the record if you want.
[4] **Mr. Briggs**: I just want to put it on the record.
[5] **The Court**: Yes, sir.
[6-7] **Mr. Briggs**: And I've got one sentence about you not letting me put the decibels in there.
[8] **The Court**: Go ahead.
[9-13] **Mr. Briggs**: My first on incorporation, Your Honor, it is very clear that this is a corporation. I didn't bring the papers but I could submit them to the court. Apostle Clark testified that it was a corporation. An Inc. Therefore, unless they showed some evidence of the justification for piercing the corporate veil you can't punish corporate officers for acts of the corporation. Period. That's all I'm going to say.

[1:20] **The Court:** All right.

[1:21-22] **Mr. Briggs:** On the other issue, Your Honor, I still believe that the fact that I was able to take decibel readings [illegible] to me was not a normal conversation. [illegible] for the City, likely to disturb [illegible] it was not that. Just that it was [illegible] the police [illegible] the defendants could do it, the police could have been able to do it and they should have been able to do it in every room in that house. Period.

[page 154, lines 1-3] **The Court:** Well, obviously the police chose not to do it and that's their choice. They can present and gather whatever evidence. It is in their discretion. They didn't gather it.

[4-6] **Mr. Briggs:** Just wanted that on the record. Your Honor, just for the record, I make my motion that - well, we don't have a verdict yet. I'll wait until we get a verdict. [7] **(Pause.)**

[8] **The Court:** All right. Let's bring the jury out, please. [9] **(Jury returns to the jury box.)**

[10] **The Court:** Mr. Foreman, have you reached a verdict?

[11] *Foreman:* Yes, sir.

[12-20] **The Court:** Would you please pass it to the court officer? All right. We have seven individual charges. On noise ordinance violation ticket number 75637GH, Defendant, Mr. Johnnie Clark, we find the defendant guilty. On noise ordinance ticket number 75634GH, Defendant, Johnnie Clark, we find the defendant guilty. On noise ordinance ticket number 68898GJ, Defendant, Ms. Harriett Clark, we find the defendant guilty. On noise ordinance 51422GQ we find the defendant, Johnnie Clark, guilty. On noise ordinance ticket number 46768GQ, we find the defendant, Johnnie Clark, guilty. On ticket number 12503GT for noise ordinance, we find the defendant, Johnnie Clark, guilty. On ticket number 68853GJ, noise ordinance, defendant, Johnnie Clark, we find the defendant guilty. Okay.

[21] **(Jury is dismissed.)**

[page 155, lines 1-3] **The Court:** Ms. Mangum, have you given any thought to what to do next?

[4-6] ***Ms. Mangum:*** I suppose we should do some sentencing, judge.

[7] **The Court:** What kind of sentencing?

[8] ***Ms. Mangum:*** Your Honor, this is a difficult case.

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

[10-23] ***Ms. Mangum:*** And it's a difficult question. I would like to believe that fines would solve this problem. There have been noise violations right up until court today and they continue. And so the City has some real concerns about what will make the defendants understand that they have got to follow the ordinance.

[13 to page 156, line 1] **The Court:** [13-17] I have been lucky enough earlier when the City had more money and would pay me to go to a national judicial seminar. I could meet judges from all over the country. They don't do that any more unfortunately because it's very educational. You learn more by talking to the judges than you do sitting in class. *[18 to page 156, line 1]* And there's two ways of looking at your job. One is you are just here to rubber stamp the sentence because the legislature or City Council has already passed it. The other is to be somewhat of a social worker in trying to craft a sentence so as to provide better good in the future for the community. I'm torn between the two, especially when it's an ongoing situation between two people who are going to have contact. I can't order one to stay away from the other. It's just not possible. So I'm more in trying to solve problems [line 1-2] than impose punishment but I'm not sure how to solve the problem.

[3] **Mr. Briggs:** Your Honor?

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

[5] **Mr. Briggs:** Could I make a suggestion?

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

[7-12] **Mr. Briggs:** I just asked Apostle Clark and he has promised me and I'll let him put it on the record so the judge would know that he was promised, there is an adjustment of volume on their p.a. system. It could be turned down to half of what the volume is.

[13-15] **The Court:** I'm going to tell you my interpretation, Mr. Briggs. First of all, I respect the First Amendment, I respect the right to speech and religion. But if I'm sitting in my own home with my doors and windows shut and there's any level of volume that interferes with my normal life it is too much. I have a right to have privacy and peace in my own home.

[16-17] **Mr. Briggs:** But nobody quoted a single word. They are imagining that noise.

[18] **The Court:** I heard the video.

[19-20] **Mr. Briggs:** They've exaggerated it.

[21 to page 157, line 4] ***Ms. Mangum:*** And, Your Honor, it's just insulting to even have this conversation right now.

The defendant was found guilty, he's been found guilty before. They are under a temporary injunction from the civil court. There are general sessions charges pending on this. I mean it just won't - and this is why because even [page 150] after this there's no understanding that the behavior is not acceptable, it is a violation of the law and it has to stop. The victims and the City certainly - I'm not asking and have never asked that they stop having services, that they stop doing any of the things that their religion calls for them to do. They are simply asked that they follow the noise ordinance and they refuse to do it.

[7] **Mr. Briggs:** Your Honor --

[8-10] **The Court:** I'm going to hear from you, Mr. Briggs. Let me ask her one quick question. Do you have other cases on the docket for tomorrow?

[11] ***Ms. Mangum:*** I do have some things.

[12] **The Court:** So we will be here tomorrow?

[13] ***Ms. Mangum:*** I will be here.

[14-18] **The Court:** Does anybody object putting off the sentencing until tomorrow morning and everybody spend some time thinking about this and see what we can come up with? We only get one chance to go it right and it would be nice to try to do it the best you could. Is that okay with you, Mr. Briggs?

[19 to page 158, line 11] **Mr. Briggs:** It is, Your Honor. But I would only make one other suggestion. I would like to see it postponed for say 90 days and I'm will gotta talk to Mr. Clark about what the sentence ought to be between now and your purview and if the City Attorney and the complainant will get some guilty out of punishing somebody that's done what we - I know that we are going to subpoena [illegible] the property manager, the former [illegible] and there [illegible] present in about thirty days. But I don't expect the court to wait that long but I'd like for the court to wait long enough to where I can prove that that commitment has been made and they are trying - I intend to pay fees, lawyer and stuff. They [illegible] trying to round up the money needed to do that. It is my opinion, and I have not talked to the contractor, but it is my opinion that the labor is probably worth a hundred [illegible] hundred and fifty dollars per window and I've talked to one of the vendors that supplies -- it is reasonable. The material is available. It's just a matter of finding the right place and the right material and enough time to do the job.

[12-23] **The Court:** Let me give you another side of that coin. They've been convicted before, it didn't stop them. They had chance to go to mediation and got up and walked out. I know what a great neighborhood you grew up in because you know the neighborhood I grew up in and that neighborhood if you hit somebody with a little stick and it didn't work, you got a bigger stick. That's how you got people's attention. You didn't let them just keep on going. You got their attention. That's how we grew up. And I'm not sure that Mr. Clark is affected by getting hit with a little stick.

[24-25] **Mr. Briggs:** Well, judge, they didn't have me as their lawyer back in those days

[26] **The Court:** That's true.

[23 to page 159, line 4] **Mr. Briggs:** And I don't put up with any baloney from my clients. They either do what I tell them to and it's reasonable or they get them another lawyer. And I might as well take credit for what I've done. I am not getting paid one penny to do this representation because I am helping a national public interest law firm and I'm not going to get any money. But this is going to be appealed all the way to the South Carolina Supreme Court.

[28-35] **The Court:** And to a certain degree Mr. Clark sounds like people who come before me who get caught shoplifting and often give the item back and say, you know, or I'll pay for it now. Yeah. That's not a real helpful attitude to have. I'm sorry because I got caught, not because I did it. I've got to admit to y'all. I mean I've been preparing for this for about a week and part of my thought process was if he gets convicted what to do about it. And I haven't come up with a good solution. I need somebody smarter than myself to look at this thing.

[36] **Mr. Briggs:** How about five days, judge?

[37-38] **The Court:** I'm afraid I'm inconveniencing people now by asking them to come back another day.

[39-40] **Mr. Briggs:** In federal court they wait thirty days, judge.

[41] **The Court:** Yeah.

[22 to page 160, line 1] ***Ms. Mangum:*** Your Honor, we are fine to wait until tomorrow. I think that gives everybody ample time to think about it, come up with some suggestions but I think it's time for a sentence and it's time for everyone to move forward. I don't see a benefit in the five days versus --

[2-5] **The Court:** Yeah, I'm not sure I do either. All right. My clerk is about to starve to death over here. For her sake I need to move on. Y'all want to shoot for nine o'clock tomorrow morning? Would that inconvenience y'all too much?

[6-7] **Mr. Briggs:** Why couldn't we go it in the afternoon to let her get her work done in the morning.

[8-9] **The Court:** Well, because I'm not going to be here in the afternoon.

[10-11] **Mr. Briggs:** I got four hours sleep last night. Y'all are killing me.

[12-13] **The Court**: Let me ask. Is nine o'clock -- would that inconvenience ya'll terribly? [14] (inaudible)
[15-23] **The Court**: Y'all would be okay with that? I appreciate it. Thank you. All right. Let's all give this some thought. Maybe even you two could talk, I don't know. Just a suggestion. The two of you together would be smarter than I am so come up with something. And I don't mean this as a threat in any way, Mr. Briggs, but if we don't come up with something creative I'm left with few options. Let's put it that way. Thank y'all very much. Hope y'all have a wonderful day. See you tomorrow. [24] (recess)

[25] **(September 11, 2014)**

[23 to page 161, line 4] **The Court**: All right Mr. And Mrs. Clark, I guess I'm ready to talk about your situation. Y'all can come up, too, if you want to. Have y'all worked anything out, did you negotiate anything?
[5] ***Ms. Mangum***: We did not, Your Honor.
[6-7] **The Court**: Do you want me to hear from any of your people?
[8] ***Ms. Mangum***: We would like to.
[9] **The Court**: They are here. I'll hear from them.
[10-11] ***Ms. Mangum***: Do you want both of them come up to the bench?
[12] **The Court**: Yeah, that would be good. I'll be glad to hear from you.

[13-23] **Mr. Clark**: Your Honor, we are pleased obviously with the court's decision but we just want to make our feelings felt that we are absolutely exhausted from this process and that the court fully understands what we've suffered through the last two plus years and how we've reached out, the City's reached out, numerous people have reached out to these people and they've constantly slapped their hand away. And probably between all the time we've invested from our home and meetings with various parties they've taken a solid three months of our lives from us the last three years, two years. And we just ask that the court use their full authority to send a strong signal to these people that their behavior is unacceptable and will not be tolerated. We just ask for help.
[page 162, lines 1-8] **The Court**: And I appreciate what you say. I wish I had a probation department that could monitor the thing. After they leave this courtroom I pretty much don't know what happens. We are not allowed to put people on probation. It's impossible. So whatever I craft has to be something that happens more or less now. [16-23] I have a hard time controlling the future without a probation department and, of course, controlling the future would be important to you folks and I just don't have that authority.

[9-23] ***Ms. Callahan***: I'd just like to say something quickly and that is, you know, it dawned on us yesterday that, while we go home never knowing what we are going to experience that day, throughout the night, throughout the week, we don't know how that's going to affect our ability to have family and friends over, the Clarks go home and they eat their dinner and they have their family over and they do everything that normal families do in having a peaceful home life and it doesn't affect them at all. And I find that to be unbelievable that we are suffering in the situation where they get exactly what they want every single time. The citations, you know, they were already done a year and a half ago.
[20] **The Court**: Mr. Briggs, hold it down, please.
[21] **Mr. Briggs**: He's in pain, Your Honor.
[22] **The Court**: He can sit down. That's okay.
[23 to page 163, line 6] ***Ms. Callahan***: A year and a half ago when Judge Hanna said they were guilty on three citations, nothing changed. Not one thing changed. As a matter of fact, the day of the citations they [same 163] were found guilty there was another citation, and that's where we are is that how do you make this stop. If you can't get people to sit down and you can't get them to be reasonable, you can't get them to give you their church schedule. [redacted] They've been calling me for a year and a half the blue eyed devil because I want peace in my home? So we really as much as this has given us a little bit of satisfaction, it gives us very little hope that our life is going to change.
[6-10] **The Court**: Controlling peoples' behavior is very difficult.
[11] ***Ms. Callahan***: I know.
[12-13] **The Court**: And especially when I don't have that probation department to oversee future conduct.
[14] ***Ms. Callahan***: Thank you for your time.
[15-16] **The Court**: No, no, thank you. Thank you both for coming. Have you got any recommendation or anything?
[17-23] ***Ms. Mangum***: I do, Your Honor. I'll talk about Harriett Clark for a second. I think that's the easy one. We would ask for just a straight up fine, the five hundred dollar fine on her charge.
[20] **The Court**: Okay.
[21 to page 164, line 5] ***Ms. Mangum***: As far as Mr. Clark goes, we have tried to craft something that would be punitive and also help in the future, so we would ask for - on four of those charges, we would ask for a five hundred dollar fine on those charges. We would ask for one of those charges to be a straight day-for-day

sentence of fourteen [page 164, lines 1-5] days. We would ask that you hold another one of those, the final charge, that you do thirty days suspended on no future violations. [page 165, lines 2-11] That goes give you some ability to control what happens. It allow us to be able to file a rule to show cause if there is a future violation.

[page 165, lines 16-22] **The Court**: Okay. I want to hear from you, Mr. Briggs, but before I do let me put this in the record. I set bond on Mr. Clark the other day and it's the only way I knew that he had a prior record because Officer Ross was there and brought the record so I was aware so I got that record. And just so you'll know - and a lot of this is pretty old but still I'm older than he is and I don't have any of this on my record. 1983 we have a shoplifting and --

[page 166, lines 1-2] **Mr. Briggs**: More than ten years, Your Honor.

[page 166, lines 3-5] **The Court**: I'm not impeaching him, I'm telling him what his record is. 1983, indecent exposure. It's hard to read. 1983, he was convicted of that indecent exposure. I'm just skipping the bad checks and there's pages of bad checks on here. I'm just skipping those. 1984, forgery. Whatever year that was, grand larceny, convicted. Probation violation. He was on probation for that grand larceny. He apparently committed another grand larceny.

[page 166, lines 6-7] ***Ms. Mangum***: What year was that, Your Honor?

[22 to page 165, line 3] **The Court**: '91, the second. I don't know when the first grand larceny was but he was on probation. He violated his probation. Failure to appear for a grand theft charge. And it's lots on here that just don't show dispositions so I'm not reading those [page 166, lines 8-9] but many more forgeries and grand larcenies that just don't show a disposition. I have another case for larceny in '95. (Inaudible). So most of that is old. I mean I'll admit that it's old. And I don't see any recent problems except bad checks and they continue up until 2006 and then they quit. Mr. Briggs, I'll be glad to hear from you, sir.

[6 to page 166, line 18] **Mr. Briggs**: Okay, Your Honor. I will be slow but deliberate. Except for a few bad checks, Your Honor, he has been a model citizen for like twenty years so I just - I won't use that adjective. I don't like to use those because they don't work sometimes but I don't think they have anything to do with what the situation we've got before us. And I have to say to this court that I believe when we get to the court of appeals this decision will be reversed. But what I have done, in order to present this court - I would do this later anyway, you to prepared to set a study and a recommendation solution to the problem. And in my opinion a solution to this problem means that no more than one decibel is made go out of the windows on the side of the neighbor's house. *I don't know whether he can do it to zero or not but it's going to be a permanent structural change in five windows on the side near the complaining witnesses. His normal time for reviewing that kind of project, taking measurements and doing all that stuff and making a recommendation for a general contractor to do the work, this company is just a consulting firm and he's going to keep in touch with Ms. Jess and tell him what the progress is. I ask him to do that and he was going to try to call her this morning but I* [page 166, lines 1-5] *told him, of course, she's going to be in court with me.* **But anyway there's been a commitment from the church to pay him an initial retainer fee of a significant amount of money next Tuesday or Wednesday and he's going to get started next week.** He tells me that the normal time for these studies is thirty days, the most is forty-five days and he's aware of our situation, quite aware of it, and knows that we want it done as soon as possible. We already have a contractor lined up who can start working on the case and get again permanent structural changes in the windows on that side of the church to do that. In addition, we talked about turning the volume down to half speed but now the pastor tells me to avoid any problems in the future while we are in the midst of the sentencing period or, quote, a probationary period or whatever else we come up with, that they are going to have their meetings in the basement so there should not be any noise getting out of the church during those periods of time. I've given it a lot of thought, I talked to the pastor about it and I have a recommendation, too, Your Honor.

[page 166, lines 20-21] **The Court**: Yes, sir.

[20 to page 170, line 6] **Mr. Briggs**: [20 to page 166, line 1] I have no problem with some kind of a holding over the head of a jail term and I know we don't normally do this in criminal court, but I like the procedure they use in family court where when the guy is behind in child support the judge tells him, Mr. Smith, you have ten days to pay to the clerk of court fifteen hundred dollars or you get thirty days in jail. The term they refer [page 167, lines 1-2] to is that he's had a chance to purge himself, Your Honor. [page 167, lines 3-17] Now I don't think what has happened is worthy of jail time. I heard every[illegible] I didn't see a sign and didn't know there was a sign. And, in fact, Your Honor, I didn't know that was the complaining [illegible] I thought it was the one behind the house. I just had one [illegible] I didn't see a sign. So they volunteered to spend a lot of time on this project. And I still haven't had an answer to the question if I've got six rooms in a house why I can't find one of those six where there's no noise. I'm not going to belabor that point. I didn't get an answer yesterday and I doubt I'll get an answer today. [18 to page 196, line 14] The only problem that I see in this is whether or not we can get permission - of course, we'll go through Ms. Jess of at least getting permission to use a ladder on the outside of each one of those windows for say like for-

ty-five minutes when we put a screen or whatever we are going to do on the outside of the window. The one possibility would be we would put plywood there and then glue the window back on the plywood so it looks like a window. But it's going to be a permanent fixture where you cannot open the window, [from 148] you cannot remove any of the structure and again we've only had one meeting with the engineer. We have a general contractor ready to go work. And my recommendation would be this. I think a five hundred dollar fine for one ticket is absurd. I think it's disgusting. And if the court wasn't here, I'd probably go outside and vomit and come back, but that's my personal opinion. I've been at this since 1967 and before this is over I'm sure I'm going to shed some tears over it because I'm very disappointed at the fact that we haven't had any real consideration by the jury now - not by the court - of the Constitutional issues because if this was a tort case all of the definitions of negligence and all would have been given to the jury. I'm not even going to go there. But my recommendation, Your Honor, is a two hundred and fifty dollar fine for Dr. Clark and I won't even argue about the fines the judge chooses with Apostle Clark. I'm not even going to get into that. The judge is smarter than I am. But my request would be two things. That whatever the sentence is the court grant a judicious stay on the sentence pending the appeal because it will be appealed. It will be done by Monday morning. And, of course, this court will get notification of that. I'll even notify Ms. Jess. But my recommendation very strongly is - again I've been at this a long time, Your Honor, I've represented guilty people. I've represented folks that I didn't think were guilty. I've been successful in doing pleas in the circuit courts. And I'm not a typical defense attorney. My position is that if a client is guilty then the client ought to do some - there ought to be some punishment. But if I [from 169] think a year is enough I don't want the system to give him three years. That's my philosophy, Your Honor. So I guess part of him is right, use one ticket to have some bite to it if you will, but I would ask the court to make it -- not the word tentative but make it conditional: Don't have any problem with no more violations. I think we are doing what - solve that problem during the process. And we can even submit periodic reports to the court. I know you don't have the time for that and I know the system doesn't allow it but we have no problem with just submitting reports to the court and, of course, to Ms. Jess also as we proceed. I think the City Attorney knows the engineer we've hired by reputation so we are not talking about some fly-by-night outfit, we are talking about somebody who is exclusively in the business for providing acoustic remedies, Your Honor. [15 to page 170, line 6] Dr. Clark still has an open wound from his surgery. He has a funeral he's got to go to in four or five days. He really should be in bed now and if I had talked to the doctor I'm sure I could have convinced him to write a stronger letter but I think this court knows that doctors don't write nearly as much as we do so we don't get what we want in those situations. The only perfect one I've got I used to do a little bit of social security cases and the doctor wrote three pages and the administrative judge called me back and said, Mr. Briggs, we don't even need to have the hearing on this. This doctor has already solved the problem. Your guy is going to get social security benefits or disability, it was, Your Honor. So I'll be [from 170] glad for Mr. Clark to confirm anything you want him to. But besides being an attorney I do a little preaching every once in a while and I always preach to my clients and I believe that what we are saying - today we will in fact do. I'm not in control of and wouldn't presume to tell this court how much time there should be in this, quote, conditional sentence, but that's my recommendation, Your Honor.

[7] **The Court**: Okay.

[8] ***Ms. Mangum***: Your Honor, may I just briefly?

[9] **The Court**: Certainly.

[10-15] ***Ms. Mangum***: I just have three things I wanted to hit on. In terms of the soundproofing, the idea came from the victims in this case. They have been asking for soundproofing since the get go. The contact that they have is one that I gave them that I've had that had they been willing to do this a long time ago this could have been resolved so to now use it to their credit I think is a disservice.

[16] **The Court**: All right.

[17] **Mr. Briggs**: Your Honor, that's not the whole truth.

[18] **The Court**: It's okay.

[19-20] **Mr. Briggs**: It's never been mentioned until two days ago.

[21-22] **The Court**: How come my docket says the fine for this is four hundred and seventy dollars?

[23-24] ***Ms. Mangum***: I was going to reference the ordinance and I have it with me.

[25 to page 171, line 1] **The Court**: But it does come with the general penalty as far as you can tell?

[2-7] ***Ms. Mangum***: It does, Your Honor. And ordinance 1.5 gives the violation punishable of up to five hundred dollars or thirty days in jail. You have the authority to issue the five hundred dollar fine. In terms of Harriett I did not mention we are asking for the five hundred dollar fine. We are also asking that that be paid within seven days.

[8-9] **The Court**: It's going to be a thousand ninety-two fifty with the court costs?

[10] ***Ms. Mangum***: That's what we are asking for, Your Honor.

[11:1] **The Court**: Okay.
[12-13] **Mr. Briggs**: And you don't have any authority to waive the court costs?
[14:1] **The Court**: I can't waive the court costs.
[15:1] **Mr. Briggs**: I understand, Your Honor.
[16-20] **The Court**: With Ms. Clark, it's a thousand ninety-two fifty or fifteen days. And I'm not going to make her pay within seven days. Ma'am, if you need a payment plan, I'll give you a payment plan. I give it to everybody else, I'll give it to you, too. But if you don't pay it then we'll have to resort to something else.
[21-22] **Defendant Clark**: Your Honor, before you sentence me, may I say something?
[23:1] **The Court**: Certainly. Yes, sir.
[24:1] **Defendant Clark**: Please excuse my seat, Your Honor.
[25:1] **The Court**: You're fine.
[page 172, lines 1-4] **Defendant Clark**: First I want to say yesterday you said something and I thought about it all night. You said that my demeanor - you said I had a demeanor as if I was a child that hand got caught in the cookie jar.
[1:5] **The Court**: I didn't say that.
[6-7] **Defendant Clark**: I might not be saying it the right way but --
[8:5] **The Court**: I never said anything similar to that.
[9:1] **Mr. Briggs**: I don't remember it either, judge.
[10-11] **Defendant Clark**: It was something about a child's hand in a cookie jar.
[12:1] **The Court**: No, sir, I didn't say that.
[13-14] **Defendant Clark**: Okay. Well, I apologize, Your Honor, because I was going to apologize to you if I had that type of demeanor to you.
[15:1] **The Court**: No, sir.
[17 to page 173, line 15] **Defendant Clark**: But as my lawyer has said, we are wrong. We accept that we're wrong. The jury found us guilty. My thing is as he said I have an open wound on my left leg which a nurse comes from DHEC three times a week and one of our members in our church who is a nurse when she's not there she sees it 'cause it's dressed twice a day. Now I also have a sciatica on this right side that goes all the way down. And the doctor is supposed to see me on Monday to decide whether he's going to do injections or we are going to go in and do surgery and try to straighten whatever he *[page 173]* think may be the problem which is Dr. Oliver. You have that letter from him. Also, as he said, one of my members in Charleston died yesterday morning while we were here in court and that funeral is next week. If I'm sentenced I would like at least to remain out sentence to go to jail, I'd like to remain out until I am able to go and do that funeral and then I'll come back and turn myself in. You trusted me with a p.r. bond on Saturday and I went to the church and I told 'em that we must follow this injunction. And so today while sitting there at the church meeting with that acoustics man I said to those on the board, they are here, that we have to move our church services downstairs in the dining room - sort of in order - it would be a little crowded putting thirty people in that small dining room but we'll do what we have to do until they finish fixing that side of the church so that no sound would get out and we will have no more trouble with Mr. Ellis and Ms. Callahan.
[16-21] **The Court**: All right. Thank you, sir. I think the City's recommendation is pretty close so here is what I am going to do. The first ticket ended in 68GQ. It's going to be a thousand ninety-two fifty or fifteen days. And I'll give him a payment plan on that. On the second one it's going to be a thousand ninety-two fifty or fifteen days and you can have a payment plan. However, I do think she's right and that I think an active sentence of fourteen days is about right so on 53GJ it's going to be fourteen days. [22-23] **The Court**: No, sir, he's going to have to do fourteen days.

[page 174, line 1] ***Ms. Mangum:*** (inaudible)
[2:1] **The Court**: No, he gets good time just like everybody else does.
[3] **Mr. Briggs**: Can he do it on the weekend, Your Honor?
[4-5] **The Court**: No, let's don't do that. I can't keep up with it, Mr. Briggs.
[7] **Mr. Briggs**: I just asked the question.
[8-22] **The Court**: We found out a couple of years ago, Judge Jenkins accidentally ran into somebody at the jail while doing bonds on the weekend, he found out about ninety percent of the people sentenced to weekends came once or twice and never came again. **And the county jail doesn't care about the City court. *They don't call us and tell us*. If we were the county they would but they don't care about the City court.** I didn't mean to put that on the record. All right. On the 34GH it's going to be thirty days, suspended. I don't think I can restrain him but six months, Ms. Mangum. **I really don't. I don't think I can issue a restraining order that's forever. I don't think I have that authority.** No noise violations in the next six months. Now I think I've done enough. I'm going to give him one day suspended on the next two. I don't want the financial burden to go on forever. I think we've already got his attention on that front.

[23 to page 175, line 2] **Mr. Briggs:** Your Honor, I'm compelled and I apologize for this but it's my basic instinct toward seeking the truth and all, the complaining witness made a big deal about how much effort they had made. Nobody has called me on their behalf. I've been involved in this case I guess now two and a half months, Brother?
Defendant Clark: Yes, sir.
Mr. Briggs: I have never seen the case that I couldn't settle.
The Court: Well –
Mr. Briggs: If the other side was willing to sit down and talk with me.
The Court: As you know, there was mediation and it was unsuccessful.
Mr. Briggs: Well, they didn't do it with me.
The Court: There was an effort to try to resolve things. Thank y'all. Appreciate it. Have a good day. Yes, sir?
Defendant Clark: Can I get those few days?
The Court: I don't think I'm going to do that, sir. In your situation in all honesty you have several failures to report on your record. I know they are old but you've got several in there where you did not show up for court when you were supposed to.
Mr. Briggs: And you did - just so the record will show, you did deny the request for a stay?
The Court: Yes, sir. He got a payment plan on his fines. He got a payment plan.
Mr. Briggs: I understand that, Your Honor but we are in the middle of solving the problem.
The Court: And that will prevent future violations.
[page 176, lines 1-3] **Mr. Briggs:** I understand that. I understand that and I made sure that Jess understands. I haven't asked her to do anything about pending citations.
The Court: He does have some pending citations and that's up to her what to do with them.
Ms. Mangum: And, Your Honor, just in terms of those, are you retaining jurisdiction on these?
The Court: Yeah, I think I need to stay with the case.
Ms. Mangum: Okay.
The Court: All right. Thank you.
Defendant Clark: And my sentence is just fourteen days?
The Court: Yes, sir.
Mr. Briggs: And he has to go with the officer now?
The Court: That would be the right thing to do.
Mr. Briggs: Yes, okay.
The Court: All right y'all take care. **(Adjourned.)**

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RICHLAND COUNTY
FILED
JEANNETTE WILSON
C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Marie Assa'ad-Faltas, MD, MPH
v.
State of South Carolina, and City of Columbia, SC

IN THE CIRCUIT COURT OF COMMON PLEAS
No. 2016-CP-40-01444

On Application for Post-Conviction Relief (PCR)

THIRD *Supplement to*

Outline of Ineffective assistance of: (1) Ted Lupton as trial counsel in Columbia's Municipal Court ("CMC"); (2) Tristan Shaffer as Appellate Counsel before Richland County Court of Common Pleas; And (3) Orin Briggs as (a) Trial Counsel in April 2013 in CMC and (b) Appellate Counsel since October 2014

In addition to her 2 December 2016 document, accepted as evidence during the 7 December 2016 hearing, and as a supplement to her testimony during said hearing, AND in addition to her FIRST supplement filed on 16 December 2016 and served on 19 December 2016, and to her SECOND supplement filed and served on 11 January 2017, Applicant hereby files the attached highlighted opinion of the U.S. Supreme Court in ***United States v. Gonzalez-Lopez*****, 548 U. S. 140 (2006),** bringing to this Court's attention that the loss of a "jury-pleasing" advocate, as evidenced in this quoted part:

> Moreover, if and when counsel's ineffectiveness "pervades" a trial, it does so (to the extent we can detect it) through identifiable mistakes. We can assess how those mistakes affected the outcome. To determine the effect of wrongful denial of choice of counsel, however, we would not be looking for mistakes committed by the actual counsel, but for differences in the defense that would have been made by the rejected counsel—in matters ranging from questions asked on *voir dire* and cross-examination to such intangibles as argument style and relationship with the prosecutors. **We would have to speculate upon what matters the rejected counsel would have handled differently—*or indeed, would have handled the same but with the benefit of a more jury pleasing courtroom style or a longstanding relationship of trust with the prosecutors.* And then we would have to speculate upon what effect those different choices or different intangibles might have had. The difficulties of conducting the two assessments of prejudice are not remotely comparable.**

is structural error, thus a deprivation of a constitutional right meriting reversal of the conviction in ***Gonzalez-Lopez,*** *supra,* and meriting grant of PCR in this case. Applicant testified and carefully provided the Court with transcript citations proving that Orin G. Briggs' appearance and demeanor before the jury were so egregious as to constitute ineffective assistance even if they had been his only failures (which they were not). Briggs' faults caused the false conviction and incredibly harsh maximal sentence (which the sentencing court may not even have had jurisdiction to enter because the ordinance, even if valid and applicable, carries a definite fine and therefore no jail time) for a first-time non-violent offender by a judge who was inevitably offended by Orin G. Briggs.

For the previously-explained, and for the now-added above-explained, reasons of pre-trial, trial and appellate counsel's ineffectiveness, and for other constitutional violations, PCR should be granted.

Affirmed, submitted and served on SC's Attorney General by hand-delivery to his office and on Acting SC Circuit Judge Toal by hand-delivery to her office in the Calhoun Building and on Ms. Leah B. Moody and on Orin Briggs and his wife by respective e-mails, all on 21 February 2017, all God so willing.

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UNITED STATES *v.* GONZALEZ-LOPEZ

Certiorari to the united states court of appeals for the eighth circuit

No. 05–352. Argued April 18, 2006—Decided June 26, 2006

Syllabus

Respondent hired attorney Low to represent him on a federal drug charge. The District Court denied Low's application for admission *pro hac vice* on the ground that he had violated a professional conduct rule and then, with one exception, prevented respondent from meeting or consulting with Low throughout the trial. The jury found respondent guilty. Reversing, the Eighth Circuit held that the District Court erred in interpreting the disciplinary rule, that the court's refusal to admit Low therefore violated respondent's Sixth Amendment right to paid counsel of his choosing, and that this violation was not subject to harmless-error review.

***Held:* A trial court's erroneous deprivation of a criminal defendant's choice of counsel entitles him to reversal of his conviction. Pp. 144–152.**

(a) In light of the Government's concession of erroneous deprivation, the trial court's error violated respondent's Sixth Amendment right to counsel of choice. The Court rejects the Government's contention that the violation is not "complete" unless the defendant can show that substitute counsel was ineffective within the meaning of *Strickland* v. *Washington*, 466 U. S. 668, 691–696—*i. e.*, that his performance was deficient and the defendant was prejudiced by it—or the defendant can demonstrate that substitute counsel's performance, while not deficient, was not as good as what his counsel of choice would have provided, creating a "reasonable probability that... the result... would have been different," *id.*, at 694. To support these propositions, the Government emphasizes that the right to counsel is accorded to ensure that the accused receive a fair trial, *Mickens* v. *Taylor*, 535 U. S. 162, 166, and asserts that a trial is not unfair unless a defendant has been prejudiced. The right to counsel of choice, however, commands not that a trial be fair, but that a particular guarantee of fairness be provided—to wit, that the accused be defended by the counsel he believes to be best. Cf. *Crawford* v. *Washington*, 541 U. S. 36, 61. That right was violated here; no additional showing of prejudice is required to make the violation "complete." Pp. 144–148.

(b) The Sixth Amendment violation is not subject to harmless-error analysis. Erroneous deprivation of the right to counsel of choice, "with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.' " *Sullivan* v. *Louisiana*, 508 U. S. 275, 282. It "def[ies] analysis by 'harmless error' standards" because it "affec[ts] the framework within which the trial proceeds" and is not "simply an error in the trial process itself." *Arizona* v. *Fulminante*, 499 U. S. 279, 309–310. Different attorneys will pursue different strategies with regard to myriad trial matters, and the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides to go to trial. It is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings. This inquiry is not comparable to that required to show that a counsel's deficient performance prejudiced a defendant. Pp. 148–151.

(c) Nothing in the Court's opinion casts any doubt or places any qualification upon its previous holdings limiting the right to counsel of choice and recognizing trial courts' authority to establish criteria for admitting lawyers to argue before them. However broad a trial court's discretion may be, this Court accepts the Government's concession that the District Court erred. Pp. 151–152.

399 F. 3d 924, affirmed and remanded.

Scalia, J., delivered the opinion of the Court, in which Stevens, Souter, Ginsburg, and Breyer, JJ., joined. Alito, J., filed a dissenting opinion, in which Roberts, C. J., and Kennedy and Thomas, JJ., joined, *post*, p. 152.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the brief were Solicitor General Clement, Assistant Attorney General Fisher, Lisa S. Blatt, and Daniel S. Goodman.

Jeffrey L. Fisher argued the cause for respondent. With him on the brief were J. Richard McEachern, Pamela S. Karlan, Joseph H. Low IV, Thomas C. Goldstein, Amy Howe, and Kevin K. Russell.*

***Quin Denvir, Joshua L. Dratel, and David M. Porter filed a brief for the National Association of Criminal Defense Lawyers as amicus curiae urging affirmance. [142]**

Opinion of the Court

Justice Scalia delivered the opinion of the Court.

We must decide whether a trial court's erroneous deprivation of a criminal defendant's choice of counsel entitles him to a reversal of his conviction.

I

Respondent Cuauhtemoc Gonzalez-Lopez was charged in the Eastern District of Missouri with con-

"complete" unless the defendant can show that substitute counsel was ineffective within the meaning of *Strickland* v. *Washington*, 466 U. S. 668, 691–696 (1984)—*i. e.*, that substitute counsel's performance was deficient and the defendant was prejudiced by it. In the alternative, the Government contends that the defendant must at least demonstrate that his counsel of choice would have pursued a different strategy that would have created a "reasonable probability that . . . the result of the proceedings would have been different," *id.*, at 694—in other words, that he was prejudiced within the meaning of *Strickland* by the denial of his counsel of choice even if substitute counsel's performance was not constitutionally deficient.[1] To support these propositions, the Government points to our prior cases, which note that the right to counsel "has been accorded . . . not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial." *Mickens* v. *Taylor*, 535 U. S. 162, 166 (2002) (internal quotation marks omitted). A trial is not unfair and thus the Sixth Amendment is not violated, the Government reasons, unless a defendant has been prejudiced. Stated as broadly as this, the Government's argument in effect reads the Sixth Amendment as a more detailed version of the Due Process Clause—and then proceeds to give no effect to the details. It is true enough that the purpose of the rights set forth in that Amendment is to ensure a fair trial; but it does not follow that the rights can be disregarded so long as the trial is, on the whole, fair. What the Government urges upon us here is what was urged upon us (successfully, at one time, see *Ohio* v. *Roberts*, 448 U. S. 56 (1980)) with regard to the Sixth Amendment's right of confrontation—a line of reasoning that "abstracts from the right to its purposes, and then eliminates the right." *Maryland* v. *Craig*, 497 U. S. 836, 862 (1990) (Scalia, J., dissenting).

Since, it was argued, the purpose of the Confrontation Clause was to ensure the reliability of evidence, so long as the testimonial hearsay bore "indicia of reliability," the Confrontation Clause was not violated. See *Roberts*, *supra*, at 65–66. We rejected that argument (and our prior cases that had accepted it) in *Crawford* v. *Washington*, 541 U.S. 36 (2004), saying that the Confrontation Clause "commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination." *Id.*, at 61. So also with the Sixth Amendment right to counsel of choice. It commands, not that a trial be fair, but that a particular guarantee of fairness be provided—to wit, that the accused be defended by the counsel he believes to be best. "The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the Counsel Clause." *Strickland*, *supra*, at 684–685. In sum, the right at stake here is the right to counsel of choice, not the right to a fair trial; and that right was violated because the deprivation of counsel was erroneous. No additional showing of prejudice is required to make the violation "complete."[2]

The cases the Government relies on involve the right to the effective assistance of counsel, the violation of which generally requires a defendant to establish prejudice. See, *e. g.*, *Strickland*, 466 U. S., at 694; *Mickens*, *supra*, at 166; *United States* v. *Cronic*, 466 U. S. 648 (1984). The earliest case generally cited for the proposition that "the right to counsel is the right to the effective assistance of counsel," *McMann* v. *Richardson*, 397 U. S. 759, 771, n. 14 (1970), was based on the Due Process Clause rather than on the Sixth Amendment, see *Powell*, 287 U. S., at 57 (cited in, *e. g.*, *McMann*, *supra*, at 771, n. 14). And even our recognition of the right to effective counsel within the Sixth Amendment was a consequence

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[1] The dissent proposes yet a third standard—viz., that the defendant must show "'an identifiable difference in the quality of representation between the disqualified counsel and the attorney who represents the defendant at trial.'" *Post*, at 156 (opinion of Alito, J.). That proposal suffers from the same infirmities (outlined later in text) that beset the Government's positions. In addition, however, it greatly impairs the clarity of the law. How is a lower-court judge to know what an "identifiable difference" consists of? Whereas the Government at least appeals to *Strickland* and the case law under it, the most the dissent can claim by way of precedential support for its rule is that it is "consistent with" cases that never discussed the issue of prejudice. *Post*, at 156.

[2] The dissent resists giving effect to our cases' recognition, and the Government's concession, that a defendant has a right to be defended by counsel of his choosing. It argues that because the Sixth Amendment guarantees the right to the "assistance of counsel," it is not violated unless "the erroneous disqualification of a defendant's counsel of choice...impair[s] the assistance that a defendant receives at trial." *Post*, at 153. But if our cases (and the Government's concession) mean anything, it is that the Sixth Amendment is violated when the erroneous disqualification of counsel "impair[s] the assistance that a defendant receives at trial *[from the counsel that he chose]*."

spiracy to distribute more than 100 kilograms of marijuana. His family hired attorney John Fahle to represent him. After the arraignment, respondent called a California attorney, Joseph Low, to discuss whether Low would represent him, either in addition to or instead of Fahle. Low flew from California to meet with respondent, who hired him.

Some time later, Low and Fahle represented respondent at an evidentiary hearing before a Magistrate Judge. The Magistrate Judge accepted Low's provisional entry of appearance and permitted Low to participate in the hearing on the condition that he immediately file a motion for admission *pro hac vice*. During the hearing, however, the Magistrate Judge revoked the provisional acceptance on the ground that, by passing notes to Fahle, Low had violated a court rule restricting the cross-examination of a witness to one counsel. The following week, respondent informed Fahle that he wanted Low to be his only attorney. Low then filed an application for admission *pro hac vice*. The District Court denied his application without comment. A month later, Low filed a second application, which the District Court again denied without explanation. Low's appeal, in the form of an application for a writ of mandamus, was dismissed by the United States Court of Appeals for the Eighth Circuit. Fahle filed a motion to withdraw as counsel and for a show-cause hearing to consider sanctions against Low. Fahle asserted that, by contacting respondent while respondent was represented by Fahle, Low violated Mo. Rule of Professional Conduct 4–4.2 (2003), which prohibits a lawyer "[i]n representing a client" from "communicat[ing] about the subject of the representation with a party . . . represented by another lawyer" without that lawyer's consent. Low filed a motion to strike Fahle's motion. The District Court granted Fahle's motion to withdraw and granted a continuance so that respondent could find new representation. Respondent retained a local attorney, Karl Dickhaus, for the trial. The District Court then denied Low's motion to strike and, for the first time, explained that it had denied Low's motions for admission *pro hac vice* primarily because, in a separate case before it, Low had violated Rule 4–4.2 by communicating with a represented party.

The case proceeded to trial, and Dickhaus represented respondent. Low again moved for admission and was again denied. The court also denied Dickhaus's request to have Low at counsel table with him and ordered Low to sit in the audience and to have no contact with Dickhaus during the proceedings. To enforce the court's order, a United States Marshal sat between Low and Dickhaus at trial. Respondent was unable to meet with Low throughout the trial, except for once on the last night. The jury found respondent guilty. After trial, the District Court granted Fahle's motion for sanctions against Low. It read Rule 4–4.2 to forbid Low's contact with respondent without Fahle's permission. It also reiterated that it had denied Low's motions for admission on the ground that Low had violated the same Rule in a separate matter. **Respondent appealed, and the Eighth Circuit vacated the conviction. 399 F. 3d 924 (2005).** The court first held that the District Court erred in interpreting Rule 4–4.2 to prohibit Low's conduct both in this case and in the separate matter on which the District Court based its denials of his admission motions. The District Court's denials of these motions were therefore erroneous and violated respondent's Sixth Amendment right to paid counsel of his choosing. See *id.*, at 928–932. The court then concluded that this Sixth Amendment violation was not subject to harmless-error review. See *id.*, at 932–935. **We granted certiorari. 546 U. S. 1085 (2006).**

II

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defence." We have previously held that an element of this right is the right of a defendant who does not require appointed counsel to choose who will represent him. See *Wheat* v. *United States*, 486 U. S. 153, 159 (1988). Cf. *Powell* v. *Alabama*, 287 U. S. 45, 53 (1932) ("It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice"). The Government here agrees, as it has previously, that "the Sixth Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds." *Caplin & Drysdale, Chartered* v. *United States*, 491 U. S. 617, 624–625 (1989). To be sure, the right to counsel of choice "is circumscribed in several important respects." *Wheat, supra*, at 159. But the Government does not dispute the Eighth Circuit's conclusion in this case that the District Court erroneously deprived respondent of his counsel of choice. The Government contends, however, that the Sixth Amendment violation is not

of our perception that representation by counsel "is critical to the ability of the adversarial system to produce just results." *Strickland, supra,* at 685. Having derived the right to effective representation from the purpose of ensuring a fair trial, we have, logically enough, also derived the limits of that right from that same purpose. See *Mickens, supra,* at 166. The requirement that a defendant show prejudice in effective representation cases arises from the very nature of the specific element of the right to counsel at issue there—*effective* (not mistake-free) representation. Counsel cannot be "ineffective" unless his mistakes have harmed the defense (or, at least, unless it is reasonably likely that they have). Thus, a violation of the Sixth Amendment right to *effective* representation is not "complete" until the defendant is prejudiced. See *Strickland, supra,* at 685.

The right to select counsel of one's choice, by contrast, has never been derived from the Sixth Amendment's purpose of ensuring a fair trial.[3] It has been regarded as the root meaning of the constitutional guarantee. See *Wheat,* 486 U. S., at 159; *Andersen* v. *Treat,* 172 U. S. 24 (1898). See generally W. Beaney, The Right to Counsel in American Courts 18–24, 27–33 (1955). Cf. *Powell, supra,* at 53. Where the right to be assisted by counsel of one's choice is wrongly denied, therefore, it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation. Deprivation of the right is "complete" when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received. To argue otherwise is to confuse the right to counsel of choice—which is the right to a particular lawyer regardless of comparative effectiveness—with the right to effective counsel—which imposes a baseline requirement of competence on whatever lawyer is chosen or appointed.

III

Having concluded, in light of the Government's concession of erroneous deprivation, that the trial court violated respondent's Sixth Amendment right to counsel of choice, we must consider whether this error is subject to review for harmlessness. In *Arizona* v. *Fulminante,* 499 U. S. 279 (1991), we divided constitutional errors into two classes. The first we called "trial error," because the errors "occurred during presentation of the case to the jury" and their effect may "be quantitatively assessed in the context of other evidence presented in order to determine whether [they were] harmless beyond a reasonable doubt." *Id.,* at 307–308 (internal quotation marks omitted). These include "most constitutional errors." *Id.,* at 306. The second class of constitutional error we called "structural defects." These "defy analysis by 'harmless-error' standards" because they "affec[t] the framework within which the trial proceeds," and are not "simply an error in the trial process itself." *Id.,* at 309–310.[4] See also *Neder* v. *United States,* 527 U. S. 1, 7–9 (1999). Such errors include the denial of counsel,

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[3] In *Wheat* v. *United States,* 486 U. S. 153 (1988), where we formulated the right to counsel of choice and discussed some of the limitations upon it, we took note of the overarching purpose of fair trial in holding that the trial court has discretion to disallow a first choice of counsel that would create serious risk of conflict of interest. *Id.,* at 159. It is one thing to conclude that the right to counsel of choice may be limited by the need for fair trial, but quite another to say that the right does not exist unless its denial renders the trial unfair.

[4] The dissent criticizes us for our trial error/structural defect dichotomy, asserting that *Fulminante* never said that "trial errors are the *only* sorts of errors amenable to harmless-error review, or that *all* errors affecting the framework within which the trial proceeds are structural," *post,* at 159 (internal quotation marks and citation omitted). Although it is hard to read that case as doing anything other than dividing constitutional error into two comprehensive categories, our ensuing analysis in fact relies neither upon such comprehensiveness nor upon trial error as the touchstone for the availability of harmless-error review. Rather, here, as we have done in the past, we rest our conclusion of structural error upon the difficulty of assessing the effect of the error. See *Waller* v. *Georgia,* 467 U. S. 39, 49, n. 9 (1984) (violation of the public-trial guarantee is not subject to harmlessness review because "the benefits of a public trial are frequently intangible, difficult to prove, or a matter of chance"); *Vasquez* v. *Hillery,* 474 U. S. 254, 263 (1986) ("[W]hen a petit jury has been selected upon improper criteria or has been exposed to prejudicial publicity, we have required reversal of the conviction because the effect of the violation cannot be ascertained"). The dissent would use "fundamental unfairness" as the sole criterion of structural error, and cites a case in which that was the determining factor, see *Neder* v. *United States,* 527 U. S. 1, 9 (1999) (quoted by the dissent, *post,* at 158). But this has not been the only criterion we have used. In addition to the above cases using difficulty of assessment as the test, we have also relied on the irrelevance of harmlessness, see *McKaskle* v. *Wiggins,* 465 U. S. 168, 177, n. 8 (1984) ("Since the right to self-representation is a right that when exercised usually increases the likelihood of a trial outcome unfavorable to the defendant, its denial is not amenable to 'harmless error' analysis"). Thus, it is the dissent that creates a single, inflexible criterion, inconsistent with the reasoning of our precedents, when it asserts that *only* those errors that *always* or *necessarily* render a trial fundamentally unfair and unreliable are structural, *post,* at 159.

see *Gideon* v. *Wainwright,* 372 U. S. 335 (1963), the denial of the right of self-representation, see *McKaskle* v. *Wiggins,* 465 U. S. 168, 177–178, n. 8 (1984), the denial of the right to public trial, see *Waller* v. *Georgia,* 467 U. S. 39, 49, n. 9 (1984), and the denial of the right to trial by jury by the giving of a defective reasonable-doubt instruction, see *Sullivan* v. *Louisiana,* 508 U. S. 275 (1993).

We have little trouble concluding that erroneous deprivation of the right to counsel of choice, "with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.' " *Id.,* at 282. Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the "framework within which the trial proceeds," *Fulminante, supra,* at 310—or indeed on whether it proceeds at all. It is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings. Many counseled decisions, including those involving plea bargains and cooperation with the government, do not even concern the conduct of the trial at all. Harmless-error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe.

The Government acknowledges that the deprivation of choice of counsel pervades the entire trial, but points out that counsel's ineffectiveness may also do so and yet we do not allow reversal of a conviction for that reason without a showing of prejudice. But the requirement of showing prejudice in ineffectiveness claims stems from the very definition of the right at issue; it is not a matter of showing that the violation was harmless, but of showing that a violation of the right to effective representation *occurred.* A choice-of-counsel violation occurs *whenever* the defendant's choice is wrongfully denied. Moreover, if and when counsel's ineffectiveness "pervades" a trial, it does so (to the extent we can detect it) through identifiable mistakes. We can assess how those mistakes affected the outcome. To determine the effect of wrongful denial of choice of counsel, however, we would not be looking for mistakes committed by the actual counsel, but for differences in the defense that would have been made by the rejected counsel—in matters ranging from questions asked on *voir dire* and cross-examination to such intangibles as argument style and relationship with the prosecutors. We would have to speculate upon what matters the rejected counsel would have handled differently—*or indeed would have handled the same but with the benefit of a more jury pleasing courtroom style or a longstanding relationship of trust with the prosecutors.* And then we would have to speculate upon what effect those different choices or different intangibles might have had. The difficulties of conducting the two assessments of prejudice are not remotely comparable.[5]

IV

Nothing we have said today casts any doubt or places any qualification upon our previous holdings that limit the right to counsel of choice and recognize the authority of trial courts to establish criteria for admitting lawyers to argue before them. As the dissent too discusses, *post,* at 154, the right to counsel of choice does not extend to defendants who require counsel to be appointed for them. See *Wheat,* 486 U. S., at 159; *Caplin & Drysdale,* 491 U. S., at 624, 626. Nor may a defendant insist on representation by a person who is not a member of the bar, or demand that a court honor his waiver of conflict-free representation. See *Wheat,* 486 U. S., at 159–160. We have recognized a trial court's wide latitude in balancing the right to counsel of choice against the needs of fairness, *id.,* at 163–164,

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[5] In its discussion of the analysis that would be required to conduct harmless-error review, the dissent focuses on which counsel was "better." See *post,* at 158–159. This focus has the effect of making the analysis look achievable, but it is fundamentally inconsistent with the principle (which the dissent purports to accept for the sake of argument) that the Sixth Amendment can be violated without a showing of harm to the quality of representation. Cf. *McKaskle, supra,* at 177, n. 8. By framing its inquiry in these terms and expressing indignation at the thought that a defendant may receive a new trial when his actual counsel was at least as effective as the one he wanted, the dissent betrays its misunderstanding of the nature of the right to counsel of choice and its confusion of this right with the right to effective assistance of counsel.

and against the demands of its calendar, *Morris* v. *Slappy*, 461 U. S. 1, 11–12 (1983). The court has, moreover, an "independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them." *Wheat*, *supra*, at 160. None of these limitations on the right to choose one's counsel is relevant here. This is not a case about a court's power to enforce rules or adhere to practices that determine which attorneys may appear before it, or to make scheduling and other decisions that effectively exclude a defendant's first choice of counsel. However broad a court's discretion may be, the Government has conceded that the District Court here erred when it denied respondent his choice of counsel. Accepting that premise, we hold that the error violated respondent's Sixth Amendment right to counsel of choice and that this violation is not subject to harmless-error analysis.

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The judgment of the Court of Appeals is affirmed, and the case is remanded for further proceedings consistent with this opinion. *It is so ordered.*

Justice Alito, with whom The Chief Justice, Justice Kennedy, and Justice Thomas join, dissenting.

I disagree with the Court's conclusion that a criminal conviction must automatically be reversed whenever a trial court errs in applying its rules regarding *pro hac vice* admissions and as a result prevents a defendant from being represented at trial by the defendant's first-choice attorney. Instead, a defendant should be required to make at least *some* showing that the trial court's erroneous ruling adversely affected the quality of assistance that the defendant received. In my view, the majority's contrary holding is based on an incorrect interpretation of the Sixth Amendment and a misapplication of harmless-error principles. I **respectfully dissent.**

I

The majority makes a subtle but important mistake at the outset in its characterization of what the Sixth Amendment guarantees. The majority states that the Sixth Amendment protects "the right of a defendant who does not require appointed counsel to choose who will represent him." *Ante*, at 144. What the Sixth Amendment actually protects, however, is the right to have *the assistance* that the defendant's counsel of choice is able to provide. It follows that if the erroneous disqualification of a defendant's counsel of choice does not impair the assistance that a defendant receives at trial, there is no violation of the Sixth Amendment.[1] The language of the Sixth Amendment supports this interpretation. The Assistance of Counsel Clause focuses on what a defendant is entitled to receive ("Assistance"), rather than on the identity of the provider. The background of the adoption of the Sixth Amendment points in the same direction. The specific evil against which the Assistance of Counsel Clause was aimed was the English common-law rule severely limiting a felony defendant's ability to be assisted by counsel. *United States* v. *Ash*, 413 U. S. 300, 306 (1973). "[T]he core purpose of the counsel guarantee was to assure 'Assistance' at trial," *id.*, at 309, and thereby "to assure fairness in the adversary criminal process," *United States* v. *Morrison*, 449 U. S. 361, 364 (1981). It was not "the essential aim of the Amendment . . . to ensure that a defendant will inexorably be represented by the lawyer whom he prefers." *Wheat* v. *United States*, 486 U. S. 153, 159 (1988); cf. *Morris* v. *Slappy*, 461 U. S. 1, 14 (1983) ("[W]e reject the claim that the Sixth Amendment guarantees a 'meaningful relationship' between an accused and his counsel").

There is no doubt, of course, that the right "to have the Assistance of Counsel" carries with it a limited right to be represented by counsel of choice. At the time of the adoption of the Bill of Rights, when the availability of appointed counsel was generally limited,[2] that is how the right inevitably played out: A defendant's right to have the assistance of counsel necessarily meant the right to have the assistance of whatever counsel the defendant was able to secure. But from the beginning, the right to counsel of choice has been circumscribed. For one thing, a defendant's choice of counsel has always been restricted by the rules governing admission to practice before the court in question. The Judiciary Act of 1789 made this clear, providing that parties "in all the courts of the United States" had the right to "the assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein." Ch. 20, § 35, 1 Stat. 92.

Therefore, if a defendant's first-choice attorney was not eligible to appear under the rules of a particular court, the defendant had no right to be represented by that attorney. Indeed, if a defendant's top 10 or top 25 choices were all attorneys who were not eligible to appear in the court in question, the defendant had no right to be represented by any of them. Today, rules governing admission to practice before particular courts continue to limit the ability of a criminal defendant to be represented by counsel of choice. See *Wheat*, *supra*, at 159. The right to

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[1] This view is consistent with the Government's concession that "[t]he Sixth Amendment . . . encompasses a non-indigent defendant's right to select counsel who will represent him in a criminal prosecution," Brief for United States 11, though this right is "circumscribed in several important respects," *id.*, at 12 (internal quotation marks omitted).

[2] See Act of Apr. 30, 1790, ch. 9, § 29, 1 Stat. 118 (providing for appointment of counsel in capital cases); *Betts* v. *Brady*, 316 U. S. 455, 467, n. 20 (1942) (surveying state statutes).

counsel of choice is also limited by conflict-of-interest rules. Even if a defendant is aware that his or her attorney of choice has a conflict, and even if the defendant is eager to waive any objection, the defendant has no constitutional right to be represented by that attorney. See 486 U. S., at 159–160. Similarly, the right to be represented by counsel of choice can be limited by mundane case-management considerations. If a trial judge schedules a trial to begin on a particular date and defendant's counsel of choice is already committed for other trials until some time thereafter, the trial judge has discretion under appropriate circumstances to refuse to postpone the trial date and thereby, in effect, to force the defendant to forgo counsel of choice. See, *e. g., Slappy, supra; United States* v. *Hughey,* 147 F. 3d 423, 428–431 (CA5 1998). These limitations on the right to counsel of choice are tolerable because the focus of the right is the quality of the representation that the defendant receives, not the identity of the attorney who provides the representation. Limiting a defendant to those attorneys who are willing, available, and eligible to represent the defendant still leaves a defendant with a pool of attorneys to choose from—and, in most jurisdictions today, a large and diverse pool. Thus, these restrictions generally have no adverse effect on a defendant's ability to secure the best assistance that the defendant's circumstances permit.

Because the Sixth Amendment focuses on the quality of the assistance that counsel of choice would have provided, I would hold that the erroneous disqualification of counsel does not violate the Sixth Amendment unless the ruling diminishes the quality of assistance that the defendant would have otherwise received. This would not require a defendant to show that the second-choice attorney was constitutionally ineffective within the meaning of *Strickland* v. *Washington,* 466 U. S. 668 (1984). Rather, the defendant would be entitled to a new trial if the defendant could show "an identifiable difference in the quality of representation between the disqualified counsel and the attorney who represents the defendant at trial." *Rodriguez* v. *Chandler,* 382 F. 3d 670, 675 (CA7 2004), cert. denied, 543 U. S. 1156 (2005).

This approach is fully consistent with our prior decisions. We have never held that the erroneous disqualification of counsel violates the Sixth Amendment when there is no prejudice, and while we have stated in several cases that the Sixth Amendment protects a defendant's right to counsel of choice, see *Caplin & Drysdale, Chartered* v. *United States,* 491 U. S. 617, 624–625 (1989); *Wheat, supra,* at 159; *Powell* v. *Alabama,* 287 U. S. 45, 53 (1932), we had no occasion in those cases to consider whether a violation of this right can be shown where there is no prejudice. Nor do our opinions in those cases refer to that question. It is therefore unreasonable to read our general statements regarding counsel of choice as addressing the issue of prejudice.[3]

II

But even accepting, as the majority holds, that the erroneous disqualification of counsel of choice always violates the Sixth Amendment, it still would not follow that reversal is required in all cases. The Constitution, by its terms, does not mandate any particular remedy for violations of its own provisions. Instead, we are bound in this case by Federal Rule of Criminal Procedure 52(a), which instructs federal courts to "disregar[d]" "[a]ny error...which does not affect substantial rights." See also 28 U. S. C. § 2111; *Chapman* v. *California,* 386 U. S. 18, 22 (1967) The only exceptions we have recognized to this rule have been for "a limited class of fundamental constitutional errors that 'defy analysis by "harmless error" standards.' " *Neder* v. *United States,* 527 U. S. 1, 7 (1999) (quoting *Arizona* v. *Fulminante,* 499 U. S. 279, 309 (1991)); see also *Chapman, supra,* at 23. "Such er-

[3] *Powell* is the case generally cited as first noting a defendant's right to counsel of choice. *Powell* involved an infamous trial in which the defendants were prevented from obtaining any counsel of their choice and were instead constrained to proceed with court-appointed counsel of dubious effectiveness. We held that this denied them due process and that "a fair opportunity to secure counsel of [one's] own choice" is a necessary concomitant of the right to counsel. 287 U. S., at 53; cf. *id.,* at 71 ("[T]he failure of the trial court to give [petitioners] reasonable time and opportunity to secure counsel was a clear denial of due process"). It is clear from the facts of the case that we were referring to the denial of the opportunity to choose *any* counsel, and we certainly said nothing to suggest that a violation of the right to counsel of choice could be established without any showing of prejudice. In *Wheat,* we held that the trial judge had not erred in declining the defendant's waiver of his right to conflict-free counsel, and therefore we had no need to consider whether an incorrect ruling would have required reversal of the defendant's conviction in the absence of a showing of prejudice. We noted that "the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment," 486 U. S., at 159, but we went on to stress that this right "is circumscribed in several important respects," *ibid.,* including by the requirement of bar membership and rules against conflicts of interest. *Wheat* did not suggest that a violation of the limited Sixth Amendment right to counsel of choice can be established without showing prejudice, and our statements about the Sixth Amendment's "purpose" and "essential aim"—providing effective advocacy and a fair trial, *ibid.*—suggest the opposite. Finally, in *Caplin & Drysdale,* we held that the challenged action of the trial judge—entering an order forfeiting funds that the defendant had earmarked for use in paying his attorneys—had been proper, and, accordingly, we had no occasion to address the issue of prejudice. We recognized that "the Sixth Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds," 491 U. S., at 624–625, but we added that "[w]hatever the full extent of the Sixth Amendment's protection of one's right to retain counsel of his choosing, that protection does not go beyond 'the individual's right to spend his own money to obtain the advice and assistance of . . . counsel,' " *id.,* at 626 (omission in original).

rors... 'necessarily render a trial fundamentally unfair' [and] deprive defendants of 'basic protections' without which 'a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . and no criminal punishment may be regarded as fundamentally fair.' " *Neder, supra,* at 8–9 (quoting *Rose* v. *Clark,* 478 U. S. 570, 577–578 (1986); second omission in original); see also *ante,* at 149 (listing such errors).

Thus, in *Neder,* we rejected the argument that the omission of an element of a crime in a jury instruction "*necessarily* render[s] a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence." 527 U. S., at 9. In fact, in that case, "quite the opposite [was] true: Neder was tried before an impartial judge, under the correct standard of proof and with the assistance of counsel; a fairly selected, impartial jury was instructed to consider all of the evidence and argument in respect to Neder's defense...." *Ibid.*

Neder's situation—with an impartial judge, the correct standard of proof, assistance of counsel, and a fair jury—is much like respondent's. Fundamental unfairness does not inexorably follow from the denial of first-choice counsel. The "decision to retain a particular lawyer" is "often uninformed," *Cuyler* v. *Sullivan,* 446 U. S. 335, 344 (1980); a defendant's second-choice lawyer may thus turn out to be better than the defendant's first-choice lawyer. More often, a defendant's first-and second-choice lawyers may be simply indistinguishable. These possibilities would not justify violating the right to choice of counsel, but they do make me hard put to characterize the violation as "*always* render[ing] a trial unfair," *Neder, supra,* at 9. Fairness may not limit the right, see *ante,* at 145, but it does inform the remedy. Nor is it always or nearly always impossible to determine whether the first choice would have provided better representation than the second choice. There are undoubtedly cases in which the prosecution would have little difficulty showing that the second-choice attorney was better qualified than or at least as qualified as the defendant's initial choice, and there are other cases in which it will be evident to the trial judge that any difference in ability or strategy could not have possibly affected the outcome of the trial. Requiring a defendant to fall back on a second-choice attorney is not comparable to denying a defendant the right to be represented by counsel at all. Refusing to permit a defendant to receive the assistance of any counsel is the epitome of fundamental unfairness, and as far as the effect on the outcome is concerned, it is much more difficult to assess the effect of a complete denial of counsel than it is to assess the effect of merely preventing representation by the defendant's first-choice attorney. To be sure, when the effect of an erroneous disqualification is hard to gauge, the prosecution will be unable to meet its burden of showing that the error was harmless beyond a reasonable doubt. But that does not justify eliminating the possibility of showing harmless error in all cases.

The majority's focus on the "trial error"/"structural defect" dichotomy is misleading. In *Fulminante,* we used these terms to denote two poles of constitutional error that had appeared in prior cases; trial errors always lead to harmless-error review, while structural defects always lead to automatic reversal. See 499 U. S., at 306–310. We did not suggest that trial errors are the *only* sorts of errors amenable to harmless-error review, or that *all* errors "affecting the framework within which the trial proceeds," *id.,* at 310, are structural. The touchstone of structural error is fundamental unfairness and unreliability. Automatic reversal is strong medicine that should be reserved for constitutional errors that *"always"* or *"necessarily," Neder, supra,* at 9 (emphasis in original), produce such unfairness.

III

Either of the two courses outlined above—requiring at least some showing of prejudice, or engaging in harmless-error review—would avoid the anomalous and unjustifiable consequences that follow from the majority's two-part rule of error without prejudice followed by automatic reversal.

Under the majority's holding, a defendant who is erroneously required to go to trial with a second-choice attorney is automatically entitled to a new trial even if this attorney performed brilliantly. By contrast, a defendant whose attorney was ineffective in the constitutional sense (*i.e.,* "made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment," *Strickland,* 466 U. S., at 687) cannot obtain relief without showing prejudice.

Under the majority's holding, a trial court may adopt rules severely restricting *pro hac vice* admissions, cf. *Leis* v. *Flynt,* 439 U. S. 438, 443 (1979) *(per curiam),* but if it adopts a generous rule and then errs in interpreting or applying it, the error automatically requires reversal of any conviction, regardless of whether the erroneous ruling had any effect on the defendant.

Under the majority's holding, some defendants will be awarded new trials even though it is clear that the erroneous disqualification of their first-choice counsel did not prejudice them in the least. Suppose, for example, that a defendant is initially represented by an attorney who previously represented the defendant in civil matters and who has little criminal experience. Suppose that this attorney is erroneously disqualified and that the defendant is then able to secure the services of a nationally acclaimed and highly experienced criminal defense attorney who secures a surprisingly favorable result at trial—for instance, acquittal on most but not all counts. Under the majority's holding, the trial court's erroneous ruling automatically means that the Sixth Amendment was violated—even if the defendant makes no attempt to argue that the disqualified attorney would have done

a better job. In fact, the defendant would still be entitled to a new trial on the counts of conviction even if the defendant publicly proclaimed after the verdict that the second attorney had provided better representation than any other attorney in the country could have possibly done.

Cases as stark as the above hypothetical are unlikely, but there are certainly cases in which the erroneous disqualification of a defendant's first-choice counsel neither seriously upsets the defendant's preferences nor impairs the defendant's representation at trial. As noted above, a defendant's second-choice lawyer may sometimes be better than the defendant's first-choice lawyer. Defendants who retain counsel are frequently forced to choose among attorneys whom they do not know and about whom they have limited information, and thus a defendant may not have a strong preference for any one of the candidates. In addition, if all of the attorneys considered charge roughly comparable fees, they may also be roughly comparable in experience and ability. Under these circumstances, the erroneous disqualification of a defendant's first-choice attorney may simply mean that the defendant will be represented by an attorney whom the defendant very nearly chose initially and who is able to provide representation that is just as good as that which would have been furnished by the disqualified attorney. In light of these realities, mandating reversal without even a minimal showing of prejudice on the part of the defendant is unwarranted. The consequences of the majority's holding are particularly severe in the federal system and in other court systems that do not allow a defendant to take an interlocutory appeal when counsel is disqualified. See *Flanagan* v. *United States*, 465 U. S. 259, 260 (1984). Under such systems, appellate review typically occurs after the defendant has been tried and convicted. At that point, if an appellate court concludes that the trial judge made a marginally incorrect ruling in applying its own *pro hac vice* rules, the appellate court has no alternative but to order a new trial—even if there is not even any claim of prejudice. The Sixth Amendment does not require such results.

Because I believe that some showing of prejudice is required to establish a violation of the Sixth Amendment, I would vacate and remand to let the Court of Appeals determine whether there was prejudice. However, assuming for the sake of argument that no prejudice is required, I believe that such a violation, like most constitutional violations, is amenable to harmless-error review. Our statutes demand it, and our precedents do not bar it. I would then vacate and remand to let the Court of Appeals determine whether the error was harmless in this case.

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Columbia, South Carolina 29202

RICHLAND COUNTY
FILED
2016 JUL 12 PM 8:31
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Re: **Marie Assa'ad-Faltas v. State of South Carolina**
2016-CP-40-01444

Dear Ms. Davis:

The above-referenced individual filed an application for post-conviction relief in the Circuit court and needs an attorney to represent him. If you will appoint an attorney and let me know his or her name, I will send him or her a copy of our file in this matter. If you have any questions with regard to this matter, please feel free to contact me at (803) 734-3737.

Sincerely,

Jessica E. Kinard
Assistant Attorney General

JEK/jcb

JEANETTE W. McBRIDE
Clerk of Court

VIRGINIA BELCHER
Chief Deputy Clerk of Court

MAILING ADDRESS:
POST OFFICE BOX 2766
COLUMBIA, S.C. 29202-2766

TELEPHONE:
Phone: (803) 576-1950
Fax: (803) 576-1785
TDD (803) 748-4999

RICHLAND COUNTY CLERK OF COURT
Richland County Judicial Center
1701 Main Street, Room 205
Columbia, S. C. 29201

July 12, 2016

Leah Moody
235 East Main Street, Suite 115
Rock Hill, South Carolina 29730

RE: Marie Assa'ad-Faltas v. State of South Carolina, 2016CP40-1444

Dear Ms. Moody:

Pursuant to Rule 608 of the South Carolina Appellate Court Rules, you are hereby appointed to represent the above named Applicant in connection with an Application for Post Conviction Relief filed pursuant to S.C. Code (1976) §§ 17-27-10. et seq. A copy of the Application is enclosed for your reference.

The Attorney General's office will be filing responsive pleadings to the Application for Post Conviction Relief. Their office will provide you with a copy of the pleadings, transcripts and other relevant documents at that time.

If you believe that you should be removed from this appointment, please refer to Rule 608 for exemptions.

Sincerely,

Virginia Belcher
Chief Deputy Clerk of Court

Enclosures

cc: Assistant Attorney General
Plaintiff
File

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND MARIE ASSA'AD-FALTAS Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Case No.: 2016-CP-40-1444 **RETURN AND MOTION FOR MORE DEFINITE STATEMENT**

In response to the post-conviction relief (PCR) application filed March 3, 2016, the Respondent would show this Court:

I.

Upon information and belief, Applicant was convicted of a municipal violation (#201301) in the City of Columbia Municipal Court on April 26, 2013. The City of Columbia then appealed this action to the Fifth Circuit Court of Common Pleas under case number 2013-CP-40-03525. The conviction was affirmed on August 29, 2014, and this was appealed to the South Carolina Court of Appeals. This appeal was dismissed on January 9, 2015, when Applicant failed to obtain new counsel in the timeline provided by the Court.

In the interim, Applicant made several filings to the Supreme Court of South Carolina, which resulted in a decision issued on January 30, 2014 that echoed the Court's prior decisions of June 28, 2013 and November 7, 2013. The underlying theme in these orders was that Applicant has a "long history of vexatious filings and inappropriate toward the courts of this State, its officers and employees," and the orders clarified that "except otherwise provided in this order, respondent may not represent herself *pro se* in any court of this State."

A further order was issued by the Supreme Court of South Carolina on January 7, 2016, in which the Richland County Clerk of Court's Office was directed to accept Applicant's motion for appointment of counsel to represent her in a potential PCR action. Applicant alleged that this was not accepted, and sought redress with the Supreme Court, which issued a second order directed to the Richland County Clerk of Court on March 28, 2016. However, it appears that before this order was issued, the Richland County Clerk of Court accepted the filing of a PCR action from the Applicant on March 3, 2016. Upon information and belief, the Honorable Allison Renee Lee, in her capacity as chief administrative judge of the Fifth Judicial Circuit, allowed the Richland County Clerk of Court to accept this filing. Respondent requested appointment of counsel for Applicant, and Leah B. Moody, Esquire was appointed.

The Applicant filed a motion for summary judgment in the instant action on June 8, 2016, and this motion is still pending.

II.

In her application for post-conviction relief, Applicant alleges her conviction was unlawful for the following reasons:

1. The conviction has severe collateral consequences on me.
    a. The conviction can be pulled under my name and prevented me from getting housing, loans, and can be an obstacle to citizenship.
2. I was forced to have counsel and he was stunningly ineffective and harmful.
    a. Please see the Federal habeas corpus case for more details of how ineffective and harmful Orin Briggs was.
3. The very existence of Columbia's Municipal Court violates the Federal Constitution.
    a. Please see transcript of 13 December 2013 hearing before Judge Lee.
4. The ordinances under which I was falsely convicted violate(s) both the Federal and SC Constitutions in many ways which my forced counsel was too ineffective to raise.

She requests the following relief: "vacate my conviction, refund my bond, and declare the relevant ordinances unconstitutional."

III.

Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of all allegations enumerated in her original application for post-conviction relief. The Uniform Post-Conviction Procedure Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Respondent submits Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Respondent notes that Applicant filed a supplement to her application for post-conviction relief on March 18, 2016; however, Respondent does not believe that this helps to narrow the issues before the Court, or in a manner to which Respondent can reasonably respond. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter.

IV.

Notwithstanding the above motion for a more definite statement, Respondent interprets Applicant's second and fourth allegations as claims of ineffective assistance of counsel. Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, supra; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent further moves for Applicant's first and third allegations to be dismissed for failure to state a cognizable claim. The Court finds the allegations must be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Collateral consequences of a conviction and the constitutionality of the existence of municipal courts are not cognizable claims under the act. Applicant is not collaterally attacking her guilty plea or sentence, but rather seeks to attack issues that are beyond the purview of post-conviction relief actions.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court must dismiss the allegations for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

VI.

Applicant must specify any claims she intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the applicant, is the only one authorized to file amendments. SCRCP Rule 11.

VII.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

VIII.

WHEREFORE, having made its return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN M. WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General
S.C. Bar #77889

ATTORNEYS FOR THE RESPONDENT
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

October 21, 2016

ALAN WILSON
ATTORNEY GENERAL

November 14, 2016

The Honorable Jeanette W. McBride
Clerk of Court, Richland County
PO Box 192
Columbia, SC 29202

Re: **Marie Assa'Ad-Faltas, v. State of South Carolina**
2016-CP-40-01444

Dear Ms. McBride:

Enclosed please find the original **Amended Return and Motion for More Definite Statement and Motion to Dismiss** of the Respondent, in the above-captioned case, for filing in your office.

The Clerk's records have not been included at this time. However, it's my understanding that the clerk's office is gathering the needed records and submitting them via postal mail. If this is not correct, please let me know.

Sincerely,

Jessica E. Kinard
Assistant Attorney General

JEK/fvh
Enclosure

cc: Leah B. Moody, Esquire

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND MARIE ASSA'AD-FALTAS Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS OF THE FIFTH JUDICIAL CIRCUIT Case No.: 2016-CP-40-1444 **AMENDED** **RETURN AND MOTION** **FOR MORE DEFINITE STATEMENT** **AND MOTION TO DISMISS**

In response to the post-conviction relief (PCR) application filed March 3, 2016, the Respondent would show this Court:

I.

Upon information and belief, Applicant was convicted of a municipal violation (#201301) in the City of Columbia Municipal Court on April 26, 2013. The Applicant then appealed this action to the Fifth Circuit Court of Common Pleas under case number 2013-CP-40-03525. The conviction was affirmed on August 29, 2014, and this was appealed to the South Carolina Court of Appeals. This appeal was dismissed on January 9, 2015, when Applicant failed to obtain new counsel in the timeline provided by the Court.

In the interim, Applicant made several filings to the Supreme Court of South Carolina, which resulted in a decision issued on January 30, 2014 that echoed the Court's prior decisions of June 28, 2013 and November 7, 2013. The underlying theme in these orders was that Applicant has a "long history of vexatious filings and inappropriate toward the courts of this State, its officers and employees," and the orders clarified that "except otherwise provided in this order, respondent may not represent herself *pro se* in any court of this State."

A further order was issued by the Supreme Court of South Carolina on January 7, 2016, in which the Richland County Clerk of Court's Office was directed to accept Applicant's motion for appointment of counsel to represent her in a potential PCR action. Applicant alleged that this was not accepted, and sought redress with the Supreme Court, which issued a second order directed to the Richland County Clerk of Court on March 28, 2016. However, it appears that before this order was issued, the Richland County Clerk of Court accepted the filing of a PCR action from the Applicant on March 3, 2016. Upon information and belief, the Honorable Allison Renee Lee, in her capacity as chief administrative judge of the Fifth Judicial Circuit, allowed the Richland County Clerk of Court to accept this filing. Respondent requested appointment of counsel for Applicant, and Leah B. Moody, Esquire was appointed.

The Applicant filed a motion for summary judgment in the instant action on June 8, 2016, and this motion is still pending.

II.

In her application for post-conviction relief, Applicant alleges her conviction was unlawful for the following reasons:

1. The conviction has severe collateral consequences on me.
    a. The conviction can be pulled under my name and prevented me from getting housing, loans, and can be an obstacle to citizenship.
2. I was forced to have counsel and he was stunningly ineffective and harmful.
    a. Please see the Federal habeas corpus case for more details of how ineffective and harmful Orin Briggs was.
3. The very existence of Columbia's Municipal Court violates the Federal Constitution.
    a. Please see transcript of 13 December 2013 hearing before Judge Lee.
4. The ordinances under which I was falsely convicted violate(s) both the Federal and SC Constitutions in many ways which my forced counsel was too ineffective to raise.

She requests the following relief: "vacate my conviction, refund my bond, and declare the relevant ordinances unconstitutional."

III.

Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of all allegations enumerated in her original application for post-conviction relief. The Uniform Post-Conviction Procedure Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Respondent submits Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Respondent notes that Applicant filed a supplement to her application for post-conviction relief on March 18, 2016; however, Respondent does not believe that this helps to narrow the issues before the Court, or in a manner to which Respondent can reasonably respond. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter.

IV.

Notwithstanding the above motion for a more definite statement, Respondent interprets Applicant's second and fourth allegations as claims of ineffective assistance of counsel. Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, supra; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent further moves for Applicant's first and third allegations to be dismissed for failure to state a cognizable claim. The Court finds the allegations must be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Collateral consequences of a conviction and the constitutionality of the existence of municipal courts are not cognizable claims under the act. Applicant is not collaterally attacking her guilty plea or sentence, but rather seeks to attack issues that are beyond the purview of post-conviction relief actions.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court must dismiss the allegations for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

VI.

Applicant must specify any claims she intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the applicant, is the only one authorized to file amendments. SCRCP Rule 11.

VII.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

VIII.

WHEREFORE, having made its return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel, should the Court not dismiss all claims pursuant to the motions above.

Respectfully submitted,

ALAN M. WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General
S.C. Bar #77889

ATTORNEYS FOR THE RESPONDENT
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

NOV. 14, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	**2016-CP-40-01444**
MARIE ASSA'AD-FALTAS	)	
Applicant,	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
STATE OF SOUTH CAROLINA,	)	
Respondent,	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Amended Return and Motion for More Definite Statement and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
Post Office Box 1015
Rock Hill, SC 29730

DATED this the 14th day of November, 2016.

Felicia V. Hayes, Legal Assistant
For Respondent

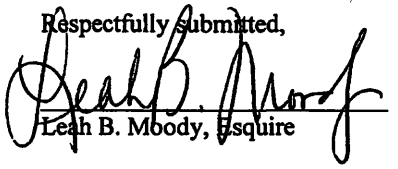
STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Marie T. Assa'ad-Faltas, Applicant, v. State of South Carolina, Respondent.	)	**Motion to Amend/Make A More Definite Statement- Post Conviction Relief** C.A. No.: 2016-CP-40-1444

To: Jessica Kinard, South Carolina Attorney General, and Richland County Clerk of Court for entry of record:

The Applicant, by and through the undersigned counsel, hereby moves the Court for an order permitting her to amend/ make a more definite statement as the grounds of her application for post-conviction relief to include the following additional grounds for relief:

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;
   e. Prejudice based on the Applicant's right to make the final argument to the jury;

Respectfully submitted,



Leah B. Moody, Esquire

Post Office Box 1015
Rock Hill, SC 29731
lbmatty@comporium.net
(803)327-4192 telephone
(803) 329-1344

Rock Hill, South Carolina
December 4th, 2016

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Marie T. Assa'ad-Faltas, Applicant, v. State of South Carolina, Respondent.	)	**Motion to Amend/Make A More Definite Statement- Post Conviction Relief** C.A. No.: 2016-CP-40-1444

The undersigned hereby certifies that she is the attorney for the Defendant in the above-entitled action and that the foregoing **Motion to Amend/Make A More Definite Statement** was served upon Jessica Kinard, South Carolina Attorney General, by via electronic mail to the following address:

Jessica Kinard, Esquire
South Carolina Attorney General Office
JKinard@scag.gov

LAW OFFICE OF LEAH B. MOODY, LLC

By: _____
Leah B. Moody, Esquire
Attorney for Defendant
235 East Main Street, Suite 115
Rock Hill, South Carolina 29731

Rock Hill, South Carolina
December 6, 2016
5

State of South Carolina)
)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2016-CP-40-1444

Marie Assa'ad-Faltas,

Applicant,

vs.

State of South Carolina,

Respondent.

Transcript of Record

December 7, 2016
Columbia, South Carolina

B E F O R E:

The Honorable Jean H. Toal, Judge

A P P E A R A N C E S:

Leah B. Moody, Esquire
Attorney for the Applicant

Jessica E. Kinard, Esquire, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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THE COURT: All right, this is the matter of Dr. Faltas against the City of Columbia and the State of South Carolina. It's a post-conviction relief. It's 2016-CP-40-1444. Present in the courtroom is Jessica Kinard for the state; Leah Moody for the petitioner; Ms. Faltas, the petitioner -- or Dr. Faltas, for the petitioner; Mr. Ted Lupton, who is a witness. And Mr. Orin Briggs we know is a witness but is not present in the courtroom at the present time, but we are confident he will be here when he is needed.

MS. KINARD: Yes, Your Honor. One matter of housekeeping. Mr. Lupton has prior appointments for 3:30 and 4. So if possible, we may take him out of order if we get through housekeeping matters.

THE COURT: All right.

MS. KINARD: Or may request to leave the record open depending on the situation.

THE COURT: Well, Mr. Lupton, we'll try to accommodate you, but we've got some things we need to deal with on the front end.

MR. LUPTON: I understand, Your Honor.

THE COURT: Very good. We have, by way of preliminary matters, communications received in my office and in Judge Benjamin's office relative to my status as the judge in this matter. As I understand there were -- there was a

status meeting. Richland County is a county that has status meetings for its post-conviction relief docket, and a status meeting -- at a status meeting some time ago, Dr. Faltas's case was statused and at that time it was indicated that she would have no problem with my sitting on this case. Later, I received a communication on November the 16th from Dr. Faltas, a rather lengthy document, the gist of which is that she asked that I recuse myself in this matter.

I communicated back with Judge Benjamin. I don't generally communicate with the litigants; I communicate with their counsel and with the judge who appoints me. So, I sent a communication to Judge Benjamin dated November the 17, 2016, copies to Jessica Kinard for the state and Leah Moody for Dr. Faltas.

And the gist of what I said was to attach the email and say that I construed this communication to be a motion that I recuse myself, or alternatively that I state in the record that I'm not biased against Dr. Faltas and can fairly adjudicate her case. In the letter I indicated I affirm that I hold no bias against Dr. Faltas and will adjudicate her matter with complete fairness.

She also covers in this communication some concern about a chance encounter that occurred between the two of us as I walked into the Calhoun Building just previous to

the letter from Dr. Faltas. She expressed concern about my attitude about her being in that vicinity. I greeted her pleasantly, she greeted me pleasantly, and I saw nothing untoward about her conduct. She has every right to be on the statehouse grounds and in public buildings subject to whatever limitations the people who keep the buildings have.

Dr. Faltas asserted that I have been unfair to her in the past. I have researched this matter in detail. The code of judicial conduct requires a judge to sit unless a judge has some real reason by way of bias or any other conflict or disqualification from sitting. I have engaged in no extrajudicial -- that is, conduct other than ruling on cases with regard to Dr. Faltas. I have seen her a couple of times over the years, but we have had no exchange or communication. I hold no bias against her. I have -- my court has and I have signed for my court a good many orders over the years dealing with Dr. Faltas, but the fact that a judge rules against a litigant is not grounds for the recusal of the judge. Therefore, I will not recuse myself in this matter.

The next thing that has been projected by the communications from Dr. Faltas is that she has some concern about Ms. Moody sitting in her matter. I'll hold that until the end of these proceedings. I find nothing in the

record that would disqualify Ms. Moody from representing Dr. Faltas. Ms. Moody was appointed by Judge Alison Lee, who appointed her as counsel for Dr. Faltas's post-conviction relief after the Supreme Court directed the Clerk of Court to receive Dr. Faltas's filings and have a counsel appointed for her, and that was done...

MS. MOODY: July 12, 2016.

THE COURT: Yes, and now coming to the central procedural problem that I'm concerned with, this is a challenge, a collateral challenge by post-conviction relief to Dr. Faltas's conviction in the city courts, and the case number is 201-301. She appealed that conviction to the circuit court in a case that has the number 2013-CP-40-3525. Relief was denied and Dr. Faltas appealed that circuit court ruling denying her appeal to the Court of Appeals. That appeal was dismissed on January the 9, 2015. Kind of in parallel with that, Dr. Faltas has made several filings with the Supreme Court, some of which have been dismissed as vexatious filings, but she has pending at the present time the direct appeal of her conviction, and it is scheduled for hearing in front of the South Carolina Supreme Court. Therefore ---

DR. FALTAS: Your Honor.

THE COURT: --- it is my position that unless -- and I'm going to give both sides a chance to be heard

completely on this, of course, but I question whether this post-conviction relief is able to be heard right now. This is not anything to do with the merits of it. This is to do with procedurally where it stacks up.

Dr. Faltas has filed many, many things in the past with all kinds of different courts, and sometimes it is a little confusing to try to sort through them and see what the procedural status of various things is. But I have looked closely at this filing and at C-Track, the software filing mechanism we have at the South Carolina Supreme Court where it tells you what has been filed in a case.

This appeal that is being -- that's pending at the South Carolina Supreme Court is an appeal, a direct appeal of this very conviction.

DR. FALTAS: No, ma'am.

THE COURT: Now, Dr. Faltas, I know you're going to be compliant with my earnest request that you not speak out of turn. There will come a time when you can be heard about this matter, but you cannot speak out of turn. I've got to put on the record the things that I'm trying to put on the record now. So, I'll ask you to please not interrupt or, or speak out of turn, and I appreciate that very much.

The -- what my examination of the C-Track system shows is that the matter that is pending before the South Carolina Supreme Court deals with this very conviction, and

if it does deal with this very conviction under whatever kind of scenario it does, this court would be premature in considering a collateral attack on the actions of the South Carolina Supreme Court.

And so that -- I am going to ask you two counsel to navigate that with me for a moment and tell me where you regard this matter from a procedural standpoint. Again, I'm not talking about the merits of Dr. Faltas's case at all, but if what she's got pending in the Supreme Court deals with this very conviction, then two things prohibit me from hearing this case right now, the first of which is it would be premature to hear a post-conviction relief case when direct appeals, original jurisdiction proceedings, or anything else are pending with the Supreme Court on this very matter because circuit court does not have jurisdiction to hear matters that are on that very same case at the Supreme Court.

Now with regard to the Court of Appeals, just to kind of complete the procedural research that I have done, the Court of Appeals has an outstanding matter that involves Dr. Faltas, and it involves some of the events that have transpired with this whole matter involving the City of Columbia.

I am not fully understanding of the posture of this thing because the filing with the Court of Appeals is a

citation complaint with the activity of the Court of Appeals, and the Court of Appeals has, of course, already ruled on direct appeal and dismissed it. I'm not completely understanding of exactly what's pending at the Court of Appeals, but it is a little collateral to what we're dealing with here inasmuch as the Court of Appeals had previously ruled on it.

So, now the Supreme Court, finally, the Supreme Court may have something that is really not supposed to be a direct appeal because it either comes too late or procedurally it's in some different posture. But my concern is no sense in going through a hearing here if we don't have jurisdiction at, at this time. There will come a time when proper for a post-conviction relief to be brought and heard in this court, but I, the filings I'm looking at lead me to believe that that time is not now.

So, the first thing I'm going to do is turn to the applicant, the applicant's attorney, Ms. Moody. And, Ms. Moody, tell me where you see this thing from a procedural standpoint.

MS. MOODY: Well, Your Honor, based on her application, the way she filed her application, it included two convictions. So, there was a trial that was held in April, on April 11th before Judge Carl Solomon, and that case ---

THE COURT: April 11th of what year?

MS. MOODY: Excuse me. I'm sorry. 2011, Your Honor.

THE COURT: All right, and this is Carl Solomon's trial, right?

MS. MOODY: Yes, ma'am.

THE COURT: All right.

MS. MOODY: And so the trial date was April 11, 2013. At that time, she was represented by Orin Briggs. That was in violation of the city ordinance, dealt with the violation of the city Ordinance 8-41 regulates -- which regulates the placement of certain items outdoors and the second, Ordinance 8-32, which regulates the sanitary condition of premises, and then Section 307.1 of the International Property Maintenance Code, which regulates the accumulation of rubbish or garbage which the City of Columbia adopted. So, that was one trial.

THE COURT: All right, and that trial involves what I could just kind of generally term condition of the property and allegations of violations of the city ordinances?

MS. MOODY: Yes, ma'am.

THE COURT: All right.

MS. MOODY: Okay, in that, there's a separate transcript that was turned up -- well, turned over to the Clerk of Court. However, there was another trial that was held. I'm not a party to that particular action, but there

was another trial that was held wherein the case number -- on her application she provides the case number of 2013-CP-40-03522. As I understood, that was a separate action. I believe that was tried by Mr. Lumpton [sic], Ted Lumpton. So, the -- as I understand it, based on my search on -- and I'm not sure if I'm looking at the same system Your Honor is looking at, but when I went to look at the case filings on the index of the Fifth Circuit judicial index, it gave the current PCR application 2016-CP-40-01444, and it references back to this April 11, 2013, trial before Carl Solomon.

THE COURT: All right. Now, what I've got as a transcript in this file is a bench trial held by Carl Solomon on April the 25, 2013.

MS. MOODY: Okay, now that's the second set of charge -- charges that was tried by Mr. Lumpton, and I believe that was sent to Your Honor ---

THE COURT: It, it doesn't say Mr. Lumpton. It says, it says bench trial held before the Honorable Carl L. Solomon, presiding judge, Columbia Municipal Court, on April the 25, 2013. And it was filed in Richland County on an appeal June the 17, 2013. That's the ---

MS. MOODY: Yes, ma'am.

THE COURT: That's the transcript that's been put in my packet.

MS. KINARD: Is that the only one you have, Your Honor?

THE COURT: Yes, ma'am.

MS. MOODY: Okay, that's the transcript that was filed with the return in error, and Ms. Kinard and I talked about that transcript and we -- she provided me -- or she received the transcript from Ms. McCurdy, which is the correct transcript that -- and I'll hand up to the ---

THE COURT: Yeah. Well, hand it up to me because that's not the one I've got in my packet.

MS. KINARD: Yes, Your Honor.

(COUNSELORS CONFER BRIEFLY.)

MS. MOODY: It was 271 pages, Your Honor, and I received that last ---

THE COURT: Now, both these two trials say that they are pursuant to a trial -- jury -- one was a jury trial and one was a bench trial conducted by Carl Solomon. I don't know where we're getting Lumpton out of this.

MS. MOODY: Okay. So, here we go. So, Mr. Lumpton was representing Ms. -- Dr. Faltas originally. At some point, he was relieved of counsel and substituted with Mr. Briggs. Mr. Briggs tried the, tried the first case, which was April 11, 2013.

THE COURT: And that was a bench trial?

MS. MOODY: No. That was a jury trial.

THE COURT: Says here -- wait a minute, April the 11th was a bench -- was a jury trial, okay.

MS. MOODY: Yes, ma'am.

THE COURT: Yeah. I see that.

MS. MOODY: All right. So, then there was a bench trial which was April 25th, which was a separate matter.

THE COURT: What was it?

MS. MOODY: Well, hold on one second, Your Honor. It was an assault, a simple assault, I believe it was, and that matter is still on appeal.

THE COURT: That, that, that is a warrant number L06697, right?

MS. MOODY: Yes, ma'am, and that was an assault case that was tried by Mr. Lumpton.

Now, where the -- it may have converged is on December 13, 2013, before Judge Alison Lee there was an appeal of those convictions. They ended up on the docket at the same time, according to the transcript. I read the transcript. It seems that they appeared on the docket at the same time, so Judge Lee took up both of the cases. The first case she dealt with was the -- Your Honor, if I may approach?

THE COURT: Yes. Please.

MS. MOODY: The first case that she dealt with was the -- here you go -- would have been the simple assault, and

then she took up the next case, which would have been the -- related to ---

THE COURT: The violation of the city ordinances?

MS. MOODY: Yes, ma'am, and so the way she did the arguments, she addressed one of the cases and Mr. Fernandez kind of argued all of them. She gave Ms. -- Dr. Faltas an opportunity to argue or reply in response to those arguments, and so that's in that one transcript. So, from that, Your Honor, I think ---

THE COURT: And what, what then happened with...

MS. MOODY: She issued an order, and that order was dated -- bear with me one second, Your Honor.

(A PAUSE.)

MS. MOODY: She issued an order as to Dr. Faltas's appeal.

THE COURT: Well, Dr. Faltas appealed both these things, didn't she?

MS. MOODY: Yes, ma'am, and the order of 2013-CP-40-325 is a separate order. I'll hand the court up my copy.

THE COURT: Does it deal with both cases?

MS. MOODY: No, ma'am. It only deals with 32 -- well, 35, it only deals with 3525. So, she did it in separate orders.

THE COURT: What is that number 35?

MS. MOODY: 2013-CP-40-3525.

THE COURT: Which is the appeal of the?

MS. MOODY: Property issue.

THE COURT: The city thing.

MS. MOODY: Yes, ma'am, and in that order she, according to her transcript, she breaks out the 2013-CP-40-3525 and the 2013-CP-40-3522, and so that order only deals with the city ordinances being A-41, A-32, and the International Property Maintenance Code 307.1. And it goes through each issue as Dr. Faltas argued them on -- in the hearing.

THE COURT: All right. Now then which case -- so, the simple assault was a bench trial. That's the case that's 201-315-22, right?

MS. MOODY: Yes, ma'am.

THE COURT: All right, and what happened to it after Alison ---

MS. MOODY: That ---

THE COURT: Alison issued an order with regard to the city ordinance violation, right?

MS. MOODY: Yes, ma'am.

THE COURT: And what happened to the other one?

MS. MOODY: Apparently she issued an order ruling against Dr. Faltas in that, according to one of the documents I pulled off of -- I, I don't -- I can't tell you

where I got this one from, Your Honor, but I did search the system for it, and it's ---

THE COURT: What date?

MS. MOODY: It was filed and received by the Supreme Court June 14, 2016. It was received by the South Carolina Court of Appeals by June 13, 2016.

THE COURT: And that was an appeal of the ---

MS. MOODY: Assault.

THE COURT: --- the simple assault?

MS. MOODY: Yes, ma'am, and that one, in the statement of the case, this assault occurred September 11, 2009. On April 25, 2013, there was a bench trial before the Columbia Manager -- excuse me, Columbia Municipal Court before the Honorable Carl L. Solomon. Ted Lumpton represented her, and so I have a copy of this initial brief from the appellant.

THE COURT: All right. Now, is that the one that went to the Court of Appeals?

MS. MOODY: It went to the Court of Appeals and it was also filed with the Supreme Court. I guess they filed -- I can't tell.

THE COURT: Well, she files things in both courts, and that kind of confuses the issue sometimes because it's supposed to go to one court and then ---

MS. MOODY: Right.

THE COURT: --- be acted upon and then another court may take it, but what happened with the simple assault? It was dismissed by the Court of Appeals?

MS. MOODY: No, ma'am. I believe that one is the one that you speak of ---

THE COURT: It's still pending.

MS. MOODY: Yes, ma'am.

THE COURT: All right. Now, then we've got the zoning ordinance thing.

MS. MOODY: Yes, ma'am.

THE COURT: All right. Alison issues an order with regard to -- that is the one I've got here, and it was filed on August the 19, 2014.

MS. MOODY: Yes, ma'am.

THE COURT: What then happened?

MS. MOODY: As I can tell, it was dismissed.

THE COURT: Yes. I, I, I see what her action was, but what did ---

MS. MOODY: Oh, I'm sorry. I mis -- the way I said that.

THE COURT: What happened after?

MS. MOODY: It went -- she -- there was an appeal filed, and then that matter was dismissed. That's how I understand it. So, it's -- they both went up on appeal under separate case numbers.

THE COURT: Right, and this one would have gone -- I mean, her appeal of this City of Columbia thing, if she appealed Alison Lee's order, that would have gone to the Court of Appeals. That -- it wouldn't go directly to the Supreme Court.

MS. MOODY: Right. So, the Court of Appeals dismissed it, based on the paperwork that I have.

THE COURT: All right, and when was that dismissal?

(A PAUSE.)

THE COURT: I mean, what I understand to be the posture of that thing, and Ms. Jessica might be able to help us with this, but I understand that the zoning violation matter or the condition of the property matter, the conviction of that thing was appealed to the Court of Appeals, right?

MS. MOODY: Yes, ma'am.

THE COURT: And was dismissed by the Court of Appeals?

MS. MOODY: Yes, ma'am.

THE COURT: All right, and that's the very thing that's here now on post-conviction relief, but where did that thing end? Did it get appealed to the state Supreme Court?

MS. MOODY: No, ma'am. I believe it was dismissed and have it -- I may have it confused. I believe it was dismissed because she did not have counsel.

THE COURT: Yes, and then she got counsel. She just went on and filed apparently at some point a post-conviction relief in this case, but she -- her appeal for the Court of Appeals was dismissed because she didn't have counsel. Then at some point she filed something with the state Supreme Court about that very issue, and the state Supreme Court directed Alison to provide her with counsel.

MS. MOODY: And I think that was -- well, Your Honor ---

THE COURT: And that's this zoning matter, but my issue with it is if there is some appeal still going on with respect to this thing, I can't rule on a PCR.

MS. MOODY: Yes, ma'am. I understand that, and based on my conversation the last time we were here for the status conference, notes that I took was that this particular case was dismissed on appeal, and that's the last I heard.

THE COURT: Okay. Let's talk, let's talk with Jessica for a minute. Jessica, what light can you shed on this thing?

MS. KINARD: Well, that's my understanding as well, Your Honor. I, I'm not aware of any order of the Supreme Court to Judge Lee getting her to allow this PCR filing.

THE COURT: Well, now you said something about that in

your filings. Let's see. Look at Return and Motion for a More Definite and Certain Statement.

MS. KINARD: Yes, Your Honor.

THE COURT: That's your filing of October the 21st, right?

MS. MOODY: Your Honor.

THE COURT: And it's talking about the --

MS. KINARD: There -- I see what you're referring to.

THE COURT: See what I'm saying? All right, this appeal was dismissed on January the 9, 2015 when she failed to obtain new counsel in the timeline provided by the court. In the interim, she made several filings to the Supreme Court, which said it was vexatious litigation. Then a further order was issued January the 7, 2016 in which the Richland County Clerk of Court's office was directed to accept applicant's motion for appointment of counsel to represent her in a potential PCR action.

MS. MOODY: Your Honor, if I may?

THE COURT: Yes.

MS. MOODY: I have a printout of the case history and on the case history it shows where she requested in the Supreme Court order a motion. She wanted appointed counsel, and that was denied. Then the order of conviction of the lower court is affirmed, and this gives the date and the times of each matter, which ---

THE COURT: Which conviction were they talking about when they ---

MS. MOODY: That was the 25 -- the, excuse me, 2013-CP-4-3525.

MS. KINARD: Which is ---

THE COURT: Well, that's the same thing as this thing here.

MS. MOODY: That's the one -- so, from the Court of Appeals's standpoint, they dismissed her appeal.

THE COURT: I got that, that one.

MS. MOODY: Okay. So, then she filed a motion, a -- I guess she filed her PCR application or received permission to file her PCR application. Then that's when there was an order for an for appointment of counsel.

THE COURT: Yeah. Well, that wasn't until much later, though. What I'm trying to figure out is what is it that's pending at the Supreme Court right now with respect to Dr. Faltas.

MS. KINARD: My understanding is the only matter pending at the Supreme Court has to do with the assault charge, which is the -- which on the appellate level with the last four digits of 3522.

THE COURT: Okay.

MS. KINARD: And that is not, in my understanding, an issue in this PCR.

THE COURT: All right, one further thing with respect to this particular thing. 3525, I'll call it for lack of a better word.

MS. KINARD: Yes, Your Honor.

THE COURT: She's now collaterally attacking that conviction, right?

MS. KINARD: Yes, Your Honor.

THE COURT: The post-conviction relief action. After the Court of Appeals dealt with her matter, she then requested some kind of assistance from the Supreme Court, and that is what led to this order by the Supreme Court in January of 2016 directing that counsel be appointed for her for a potential post-conviction relief. Am I right?

MS. KINARD: Yes, Your Honor. The, the phrasing of the order is a bit ---

THE COURT: Let me see.

MS. KINARD: --- convoluted. Sure. One moment, please.

(A PAUSE.)

THE COURT: Okay, we're just going to put in the record what it says. I've got a clearer picture here. It says she's filed a petition in this court, meaning the Supreme Court, asking that the Supreme Court direct the clerk of this court to accept a PCR application by her. Of course, she had been previously restricted from filing

things herself without the signature of a lawyer. The heart of the order says:

> While we realize a PCR action has not been commenced, petitioner is prohibited from commencing such an action except through counsel. Accordingly, we find it appropriate under these unusual circumstances for the motion to appoint counsel to be accepted for filing despite the fact that the underlying PCR has not been commenced. We, therefore, direct the Richland County Clerk of Court to accept the petitioner's motion for appointment of counsel to represent her in a potential PCR action for filing and forward the motion to the appropriate judge.

So, that's what happened. They just -- the court has not lifted its restriction against her directly filing things with the court, but what the court has done is say when you get ready to file something, we're going to get Judge Lee to appoint a lawyer for you, and that is how Ms. Moody got involved in this matter. You were appointed pursuant to this order of the Supreme Court.

MS. MOODY: Yes, ma'am.

THE COURT: Ms. Kinard, can we mark -- can I give this to the clerk to get a copy made at some point?

CLERK: Yes.

THE COURT: And then we'll mark that and be sure it's in the record of these proceedings.

MS. KINARD: Yes, Your Honor.

THE COURT: Okay, I think I understand now the posture of the thing, and what the posture is, she -- her appeals have been completed on this matter on direct appeal.

MS. KINARD: Yes.

THE COURT: She was never heard by the Supreme Court on her -- on any kind of direct appeal on this matter. Is that what you all are telling me, Ms. Kinard?

MS. KINARD: Yes, Your Honor. That's our understanding.

THE COURT: So, her appellate rights have been dealt with by the dismissal at the Court of Appeals stage, and she is now filing a PCR action to collaterally attack it, and that's in both of your minds something that's teed up and capable of being heard today?

MS. MOODY: Yes.

MS. KINARD: Yes, Your Honor.

THE COURT: I agree with you. Very good. All right, so the posture of the thing, then, is this. I, I have not recused myself, so I'll be hearing this matter.

DR. FALTAS: Ma'am, may I put something on the record ---

THE COURT: Just a second.

DR. FALTAS: --- about that?

THE COURT: Just one second.

DR. FALTAS: All right.

THE COURT: Just one second.

DR. FALTAS: Okay.

THE COURT: The posture of this matter is that I, I will sit on this case. Have not recused myself. This case will be presented by Ms. Moody as attorney for Dr. Faltas as the South Carolina Supreme Court has ordered.

And, Dr. Faltas, I will hear from you briefly, but the procedure I'm going to follow is to have Ms. Moody present the case. I'm sure she'll call you as a witness and all that is fine, but I'm not going to vary from the procedure the Supreme Court has set forward, which is they have continued to say you must be represented by counsel. And pursuant to that order of January of this year, Ms. Moody has been appointed to represent you.

You have made certain filings or submissions or email communications with me. I have sent those to Judge Benjamin, but I tell you again: these kinds of things should not be submitted by you. They should be submitted by Ms. Moody. Now, if you've got something you'd like to say briefly we start these proceedings, that, that'd be fine.

DR. FALTAS: Yes, ma'am. First of all, you claimed

that in the status conference I said that it's okay for me -- for you to hear it. That did not happen. What had happened is that Judge Benjamin had concern about Your Judgeship having conflicts in cases because I think there is, there is some law that the trial judge should not be the PCR judge, but there are many case on which you sat as, as a Supreme Court Chief Justice that are coming back before you as PCR.

And then when it came to me, she specifically asked me about that, and I gave the example of the Honorable Judge Childs when she was in circuit court. She was previously at Nexsen Pruet and at that time I was suing the University of South Carolina, and then Associate Childs had written memoranda against, against me, and I was aware of that. And when I came before her in another matter which, incidentally, I won, so I don't know where you get off saying that I was frivolous if I won all my civil cases in this court unless ---

THE COURT: Dr. Faltas.

DR. FALTAS: Okay.

THE COURT: Let's, let's kind of ---

DR. FALTAS: Yes, ma'am. Yes, ma'am.

THE COURT: --- stick to, stick to the issues.

DR. FALTAS: So, so, so, so, so, so, so, let me, let me just, let me just continue, please, and I need to put

this on the record. Then after that, I'm leaving because I made the conscientious decision that ---

THE COURT: No, ma'am, that's not going to happen.

DR. FALTAS: I'm not here under subpoena. If, if, if, if, if ---

THE COURT: I direct you at this time, Dr. Faltas, that we are going to hear your case today, and you are not free to leave until we complete hearing your case.

DR. FALTAS: All right.

THE COURT: You are going to have the ability -- there are five people who depend on being able to review my papers in order to keep their job. You'll have plenty capability to have an appellate body review what I do.

DR. FALTAS: Okay.

THE COURT: But I am going to conduct the proceeding today. You going to stay here and participate in that proceeding. Again, I, I, I think you're going way far afield of what Judge Childs's situation was relative to this ---

DR. FALTAS: Okay, let's talk about your ---

THE COURT: Just one second. Just one second. I think you're going very far afield when you get into what Judge Childs did or did not do when she was a lawyer with Nexsen Pruet, but here's what I say to you.

I have not had any -- I have not made any ruling with

respect to the merits of your conviction in city court. That is what is as a circuit court I'm being asked to do is make rulings about that, and I will make them fairly and impartially, and do not believe that I should recuse myself. So, if it turns out I'm wrong, why there's an appellate court to rule ---

DR. FALTAS: But I need to make the record why you are wrong in not recuse ---

THE COURT: You, you made the record.

DR. FALTAS: All right. No, I didn't.

THE COURT: Yes, you have. I, I ---

DR. FALTAS: In fact, in fact ---

THE COURT: Just a second, Dr. Faltas.

DR. FALTAS: The letter, your letter from November 16th was not shown to me until December 6th, and in it you wrote if Dr. Faltas would like me to recuse myself, I would be happy to do so.

THE COURT: Yes, sir -- yes, ma'am.

DR. FALTAS: And you directed, you directed Ms. Moody to share it with me.

THE COURT: Yes, I did.

DR. FALTAS: She did not share it with me until December 6th.

THE COURT: Well, that ---

DR. FALTAS: And, and may I just say in that letter,

you said if Dr. Faltas wants me to recuse myself, I would be happy to do that.

THE COURT: I have since done research about this matter, and I have concluded, Dr. Faltas, that it's not proper for me to ---

DR. FALTAS: Let me say one other thing.

THE COURT: --- to recuse myself.

DR. FALTAS: You did have *ex parte* contact, not with me but against me, and let me tell two things.

THE COURT: No, ma'am. No, ma'am.

DR. FALTAS: Well, I, I ---

THE COURT: No, ma'am.

DR. FALTAS: I just show an order signed by you, if I may?

THE COURT: Dr. Faltas, we're not ---

DR. FALTAS: I need to make my record.

THE COURT: No, ma'am. No, ma'am.

DR. FALTAS: I cannot make my record?

THE COURT: If, if, if I ---

DR. FALTAS: Okay.

THE COURT: If I am prohibiting you from putting everything into the record you would like to put, I am sure that can be taken up on appeal but no, ma'am. We are not going to get into the merits of every time the Supreme Court has ruled against you and I have signed orders for

the Supreme Court. We're not going to do it that way. If you've got problems other than with this case, those problems can be put upon the record when your counsel offers you for testimony, but I've made a ruling on that. It could be the wrong ruling, in which case the Supreme Court can review my papers.

But at the present time, we're not going to have one more time when we go through a bunch of procedural delay of this matter. It's been set for a hearing for today, and we're going to hear it today. And if you are not satisfied, I will not be in the least bit offended if you appeal that to a higher authority. But at the present time, I've done the research. I think it indicates to me that not only should I not recuse myself, but I have a duty to sit, and that's what I intend to do.

DR. FALTAS: I just note that exception to that and an exception for not ---

THE COURT: Sure.

DR. FALTAS: --- for not being able to put my record ---

THE COURT: That's very good.

DR. FALTAS: And let me tell you that unfairness is being compelled to not speak for myself when Dillon Roof was allowed to speak for himself. At some point, somebody should say that this is indecent to do all this to me,

whose only crime was that people brought false charges against me and I defended myself *pro se* and won, and Judge Newman on the record said you've always been most pleasant and gracious.

THE COURT: Good. I think you've made your record with respect to that, and I received, I think, a previous communication with you where you made the point about self representation, but I don't control that. The South Carolina Supreme Court controls that. I am simply here as a circuit judge, and the orders in this very case say that you must be represented by counsel. You have a counsel, and that's how we're going to proceed.

DR. FALTAS: Well, if the counsel is ---

THE COURT: I am not ---

MS. MOODY: Your Honor, if I may? If we may call her to the stand so she can put up her testimony as to whether -- as to her application and as to her issues that she's filed in her application?

THE COURT: And that's what we're going to do.

MS. MOODY: Thank you, Your Honor. At this time, I would call Dr. Faltas to the stand.

DR. FALTAS: Ma'am.

THE COURT: Very good. Thank you, ma'am.

DR. FALTAS: Do I have, do I have the right to refuse to testify if I don't want to testify? There is

something ---

THE COURT: No. No, ma'am.

DR. FALTAS: --- according to the Fifth Amendment in the United States Constitution, is that not? Am I not ---

THE COURT: Wait a minute. Wait a minute. Wait a minute. Wait a minute, Dr. Faltas. This is your petition for review of your conviction. You have asked the court to hear it, and you are the witness that's going to present your position about it. So, yes, you're going to take the stand now and present your case about your conviction.

We're not going to get further into these other collateral and procedural matters. I've looked at this thing carefully. I've listened to your counsel, who's convinced me not to dismiss this PCR because it's procedurally okay for it to be heard today. I'm going to do that. And yes, ma'am, you're going to take the stand and respond to your counsel's questions and the questions of Ms. Kinard about the petition you've brought before the court.

DR. FALTAS: First I affirm. I do not swear for religious reasons.

THE COURT: That's fine. We have people do that all the time. It's perfectly okay.

DR. FALTAS: The, the second thing. Just as you changed your mind about recusal, I have the right to change

my mind about insisting that either I be heard on my own or not be heard at all. But just because -- I think you heard me. I changed my -- I did bring this, and incidentally Ms. Moody did not file the initial application. Judge Lee ordered that I file the initial application *pro se*. Not only did I file the initial ---

THE COURT: I, I understand the procedural posture of it, Dr. Faltas, and you did exactly right pursuant to what -- the way the thing was set up and you were asked to do. You filed that document, and then Attorney Moody was appointed to handle your claim. So, you, you handled it the right way. I have no criticism with that.

DR. FALTAS: I filed two supplements, and in addition I filed a motion for default and for summary judgment before Ms. Moody was appointed, and I think I'm entitled to have it heard because Judge Lee specifically approved the filing of it.

THE COURT: Well, we, that's what we are just about to do if you will take the stand, Dr. Faltas. We're going to hear all those things.

DR. FALTAS: But I'm taking it under protest.

THE COURT: Yes, ma'am. You can do it under protest if you want to, but please come forward.

And Dr. Faltas wishes to affirm rather than swear.

MARIE ASSA'AD-FALTAS, HAVING DULY

AFFIRMED, TESTIFIES AS FOLLOWS:

THE COURT: One thing that -- please have a seat, Dr. Faltas. One thing that should be remembered about these proceedings: these are civil proceedings, not criminal proceedings. This is not a prosecution, and much of the projection that has been made has to do with rights that people have when they're being prosecuted.

This is not that kind of proceeding. This is a plain old civil lawsuit that is a collateral attack on a conviction. So, some of the things you've just asserted, Dr. Faltas, are really not apposite in this particular thing. This is a civil proceeding. The petition is a very fulsome discussion of what you think the issues are, and I now turn it over to Ms. Moody to ask questions.

THE WITNESS: Actually, ma'am.

MS. MOODY: Thank you.

THE WITNESS: There is an open First Amendment right to not speak when one does not want to speak. It, it's twofold.

THE COURT: That's, that's ---

THE WITNESS: You have the right to say what you want, and you also have the right to silence under the First Amendment, not the Fifth.

THE COURT: No, ma'am, not in a proceeding where you bring the proceeding in civil court to attack your

conviction -- I mean, to collaterally attack your conviction by citing procedural errors. In that case, you've got to be -- you've got to take the stand and discuss, and that's what's going to happen right now.

DIRECT EXAMINATION BY MS. MOODY:

Q. Dr. Faltas.

MS. MOODY: May it please the court?

Q. Dr. Faltas, could you please state your full name for the record?

A. Marie-Therese Halim Assa'ad-Faltas Gadallah Awad El Minyawi.

Q. And where do you currently reside?

A. In Richland County, South Carolina.

Q. And we've gone through this proceedings. This is a PCR application that you filed, correct?

A. I'm sorry?

Q. This is a PCR application that you filed, correct?

A. I think your first question was we've gone through it. I don't know that we've gone through it.

Q. We've gone through the type of case this is. It's a PCR, right?

A. This is a PCR application number 2016-CP-40-01444.

Q. Okay.

A. From the conviction under an ordinance summons, not under the sections that you mentioned. The sections that

you mentioned when you were talking to Madame Judge are sections of the International Property Maintenance Code that ---

Q. But, Ms. -- Dr. Faltas.

A. Could you let me finish my answer? The International Property Maintenance Code applies only to buildings.

Q. We're going to get to that, Dr. Faltas, but let's just -- can you just bear with me right now, and I'll give you a ---

A. So, I cannot ---

Q. --- chance to explain.

A. I cannot in honestly -- 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.

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

A. Yes, ma'am.

Q. Okay, and ---

A. Unconstitutionally.

Q. You had a trial in municipal court on April 11, 2013, correct?

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 ---

Q. Dr. Faltas, I just need you to answer the question that I ask. We're going to get to that point ---

A. I have no ---

Q. --- of all your issues.

A. ---- confidence that you will because I don't think you even know the posture of my case.

Q. Okay, and that's fine, but you were tried and convicted in city court on April 11, 2013, and sentenced April 25, 2013, correct?

A. 25th, 2-5, yes, ma'am.

Q. Okay, and at that time, who were you represented by?

A. Okay, initially I was represented by Ted Lupton until two days before the trial and then Ted Lupton, without talking to me, he obtained an *ex parte* order from Judge Barber substituting Mr. Briggs for himself.

Q. Okay. Let me stop you right there. So, when you -- when did you become -- when were you represented by Ted Lumpton? When was the first date of representation?

A. To give you a complete answer, previously Mr. Lupton had represented me briefly in June and July 2011 in a totally separate matter. I was acquitted. I am give -- you see, I took an affirmation to tell the whole truth, and I take it very seriously.

Q. Okay. Well, let me ---

A. The second, the second -- Mr. Lupton was appointed for

this charge and four other charges for me on or about January 18, 2013. That, that ---

Q. So, Mr. Lumpton represented you from January 18, 2013, until two days before the trial, which would have been April 9, 2013?

A. Yes, ma'am.

Q. Okay, and just to be clear, we're talking about one charge, one trial?

A. Yes, but it became open season on me on everything. It did not stay on the summons. It did not stay on anything. It, it was totally a farce.

Q. Okay. Well, we're going to come to that, Dr., Dr. Faltas. Let's just kind of like frame the issues here, okay? So, you filed your application against Ted Lumpton, correct?

A. Ted Lupton, Orin Briggs, and Tristan Shaffer.

Q. Okay, and it all relates to this particular charge out of city court on April 11, 2013?

A. It relates to this charge, to the initial appeal from this charge, and to the subsequent appeal to the state Court of Appeals. So, Mr. Lupton was ineffective in failing to do adequate investiga -- okay. Sorry. Go ahead.

Q. Okay. I'm going to come to that. I'm going to ask you specifically what your attorney did, but as to

this charge, now what was your sentence that you received as to this charge?

A. I received thirty days not suspended but stayed on, on appeal bond. Stayed, not suspended.

Q. Stayed, not suspended.

A. Yes, ma'am, and actually in a different federal case where Judge -- U.S. ---

Q. Let's, let's not get into a federal case. Let's stay focused on this particular case, okay? I want to keep the record clear. So, now you filed this application against those three attorneys. As to Mr. Lumpton, could you please state for the court what Mr. Lumpton was ineffective in doing for you?

A. Yes, ma'am. First of all, I, I have to note that I always cooperate to the fullest with the attorneys that are imposed on me, even though I think it's a violation of my Sixth Amendment right to represent myself. But nonetheless, once they are appointed for me, I cooperate with them completely. In fact, they often complain that I give them too much information and I say too much. It's better to have it and not need it than need it and not have it.

Q. Well, let me restate the question.

A. Yes.

Q. What did Ted Lumpton not do that you feel was

deficient?
A. Well, first, personally, as, as a person I don't see him in the courtroom. Unless he's -- I, I can put ---
Q. Dr. Faltas.
A. Yeah, I have problems speaking ---
Q. Just give me the testimony of what he did.
A. I know, I know, but I would prefer that he be here because I don't like to criticize people behind their backs.
Q. I'm sure he will forgive you. Could you please state for the record what Mr. Lumpton did not do for you?
A. He did not tell me at all what his defense was going to be, not at all. In fact, he came to the property twice, and I show -- I'm sorry. At this point may I, may I have some water for my voice? Thank you.
(A PAUSE.)
Q. He did not come to the property?
A. No, no, no, no, no. He did come to the property.
Q. Oh. He came to the property.
A. And I showed him that the property was clean and wonderful, and I also showed him pictures of that property before Mother and I bought it. It was figuratively a jungle, and I also provided him the video where I got a special exception from the city to, to, to, to build a residence on that. And in that video, the Board of Zoning

and Appeals makes a unanimous motion and unanimous decision that what -- because at the time I went before the Board of Zoning and Appeals, I had not been allowed to buy the property -- and when I say I, it's shorthand for Mother and me -- until we get that special exception. So, they had the pictures of how the property was before we bought it, and they decided that our buying it and putting a residence on it would be an improvement.

Q. Well, now, let's come back around now.

A. Yes.

Q. I understand all that, but what did Mr. Lumpton not do? You gave him information, and you talked to him about your case?

A. He -- okay, remember he was appointed on five City of Columbia charges against me, and I'm sorry. If, if you please, there is a stack that has -- that, that -- the four stacks -- the five stacks are identical, but there is one that has yellow highlighting.

MS. MOODY: Your Honor, may I approach the witness?

THE COURT: Of course.

BY MS. MOODY:

Q. Could you please state what did Mr. Lumpton not do for you?

A. Yes, ma'am. Yes, ma'am. He said that -- so, after the, after the first trial that he advised me not to

testify -- but I rejected his advice and testified. And in the middle he pressured me to plead guilty to that charge and to other charges, including that one and I refused. After that, I -- thank God the jury returned a not-guilty verdict. As we were walking out, I told him I will not plead guilty to that property charge.

Q. So, let me ask you real quick.

A. Yes.

Q. You're talking about the property charge that you went to trial on April 11th?

A. Yes, ma'am. Yes, ma'am.

Q. Okay.

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.

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

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.

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

A. Yes, ma'am.

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?

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

Q. So, you all never discussed the defense?

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.

Q. Okay. Now let's, let's talk about ---

A. What he didn't do.

Q. We're, we're going to come to that, but what, if anything else, did Mr. Lumpton ---

A. So ---

Q. --- not do for you?

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.

Q. Now, when he made the motion to Judge Solomon, were you present?

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.

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?

A. He didn't share with anybody ---

Q. Right.
A. -- what the basis was going to be.
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?
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 ---
Q. Now ---
A. In addition, Judge Solomon asked me who the witnesses I would like, and I specifically identified John Ansell from this ---
Q. Could you repeat the names again, please?
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.

Q. Now, when you -- what day was this pretrial held?
A. March 12, 2013, and you have the transcript. That's all upper case. I went through the very tedious process of extracting it and converting it to uppercase/lowercase and also highlighting it. So, may I tell you now what page and

line Mr. Lupton says that he has a motion to dismiss that, that ticket?

Q. Sure.

A. Thank you.

(A PAUSE.)

A. And I will also tell you something else that ---

Q. Okay. You'll find it?

A. Yes, yes, yes.

(A PAUSE.)

A. Page 6 -- sorry, page 17, line 1: Mr. Lupton: Your Honor, I think there would be -- I would move to quash the ticket on that.

And then the judge says: We'll take it all up on the same day. Then after, we talk some more about discovery. Okay. Thank you. Anything else, Mr. Lupton?

And that's on page 25. Page 24, page 24, line, line 20 -- page 21, line 25 the court says: Thank you very much. All right, anything else, Mr. Lupton? Mr. Lupton answers: Other than motions.

Q. So, on -- in the pretrial or in a status conference for discovery, Mr. Lumpton spoke to the court that he had a motion to dismiss, and y'all went through discovery, correct?

A. But he did not make the motion to dismiss.

Q. Okay, but he was going -- he was to later make the

motion to dismiss on the day of the trial, which would have been April 11, 2013, correct?

A. Yes.

Q. Okay.

A. In -- okay, where -- also there, there was a point that I needed someone to argue, which is that the municipal court is not a proper court, and that's one of the bases of my PCR application ---

Q. Okay, but ---

A. --- that the municipal court does not have jurisdiction because it's not a court.

Q. Okay.

A. And the reason it's not a court is that only a sovereign may have a court and may prosecute crime, and under the Constitution of the United States of America, there are only two levels of sovereignty.

Q. Hold ---

A. The federal and the state.

Q. Hold on. Let's talk about what Mr. Lumpton -- stay focused on that, what Mr. Lupton didn't do. So, I just ---

A. He didn't ---

Q. He did not file the motion. He did not ---

A. Share it with me or with ---

Q. Share the defense with you?

A. Or with Mr. Briggs.

Q. Or Mr. Briggs, and that's your basis for him being ineffective?

A. He, he, he, he -- there is, there is more. He also did not discuss any other defenses with me. When he came and saw the, the property, the land, I showed him -- actually, one time one neighbor, they were taking their dogs to relieve themselves on that property, and that's why I needed -- and he saw it for himself.

Q. Okay, but overall, your overall claim is that he didn't discuss the defenses in your case that you all would have presented at a trial?

A. He also did not attend the jury qualification. And, in fact, the jury qualification was in violation of then Chief Justice Toal's order that specifically said only Judge Solomon is not recused.

The, the jury qualification which occurred on April 8, 2011, when Mr. Lupton was still my lawyer was done by municipal court -- they call him Associate Judge; I don't know what that means -- Bogan, who is recused from my cases, and Mr. Lupton was not there. And during that jury qualification, Columbia Municipal Court Associate Judge Bogan made false and very derogatory statements about me to the jury within hearing of the jury, which tainted the jury.

So, so Mr. Lupton was not only -- did not only not

attend. He threatened me that if I called him to ask him to attend the jury qualification, he will have me held in contempt of court.

Q. Okay. So, let me sum this up just so we're clear as to what Mr. Lumpton didn't do. He didn't discuss with you your defenses?

A. Correct.

Q. He did not file the motion or he was not heard on the motion to dismiss?

A. He did not. He should have put it in writing at some point because ---

Q. We're, we're not going to go back through it. Let's just -- I just want to confirm that ---

A. I, I just ---

Q. --- that those are the ---

A. I just want to say this is not a motion that depends on the element of surprise. It's, it's the facts are the facts.

Q. I have ---

A. Okay.

Q. We, we have that. So, he did not discuss with you your defenses. He did not file the motion to dismiss. He did not attend the jury qualification which was on April 8, 2011?

A. Before, before he was relieved or before ---

Q. Before he was relieved?

A. Or before he was substituted. So, he did not preserve my rights on that, and he allowed Bogan, who is recused, to do the jury qualification, which if he had carefully read then Chief Justice Toal's 7 March 2013 order, he would have known that all the others except Judge Solomon were recused. So, so, he allowed that to happen.

And, in fact, Mr. Briggs volunteered to come with me because I was very worried about the jury qualification. You know, ma'am ---

Q. Okay. Well, let's ---

A. Okay.

Q. Stay focused with me. Stay focused with me.

A. Okay.

Q. So outside of those things, is there anything else he do not do prior to being substituted by Mr. Briggs?

A. Yes.

Q. Mr. Lumpton.

A. Yes. Yes.

Q. Did he -- is there anything else ---

A. Yes.

Q. --- he failed to do?

A. Yes, yes, yes, yes, yes.

Q. Can you ---

A. Yes. I'm, I'm about to say.

Q. Okay.

A. He failed to procure evidence that this was a vexatious complaint by the next-door neighbor who was my former landlady because her sewer lines had been illegally and surreptitiously run under the land that Mother and I bought and, and there was no easement. He also failed to explore -- I had nine legitimate defenses. One of them was selective prosecution.

Q. Yes.

A. He completely failed to, to, to explore that. His sole focus was to, to pressure me to plead guilty.

Q. Okay. So, now when did Mr. Lumpton stop being your attorney? So, we know on April 8th he was your attorney, but what date was he no longer your attorney?

A. I think he produced an order from Judge Barber signed April 9th, and he didn't produce it until April 10th. At least he didn't show it to me until April 10th. So, it's questionable whether between whether the 9th and the 10th. But, but he did not -- you know, there are rules about substitution that you have to keep the client's best interest, and he should have known that the client's best interest is to give Mr. Briggs the basis for any motion. Mr. Lupton was so confident about that, he wouldn't explore the other defenses. He was so confident ---

Q. Okay. So ---

A. --- about that other, but he didn't share it with Mr. Briggs, knowing that Mr. Briggs had very little time. And I asked him. I -- to Mr. Lupton, I said did you share the basis of that motion with Mr. Briggs? He said I won't presume to tell another lawyer how ---

MS. KINARD: Your Honor, I'm going to object on hearsay. There's been a few incidents where ---

THE WITNESS: Well, that's why I wanted him here.

THE COURT: Just, just whoa. Now wait a minute. Wait a minute. When an objection is made, the witness does not respond to it.

THE WITNESS: I'm sorry.

THE COURT: The lawyer responds to it.

THE WITNESS: I apologize for that one, ma'am.

THE COURT: The objection is hearsay.

BY MS. MOODY:

Q. Okay, you need to only talk about what you were party to.

A. Yeah. I was talking ---

Q. You cannot say he said, someone else said.

A. I cannot say ---

THE COURT: That's correct. Just rephrase the answer and let me say this, Dr. Faltas. We, we are trying very hard to let you present your case as you would like to, but I'm not going to allow this thing to go on forever and

ever.

It's repetitive, what you're saying. You've got some good simple points, but they are lost in all this continuing to supplement your answer by not asking -- answering the question. She will -- Ms. Moody is an experienced and good lawyer. She will lead you through the things that need to be brought out about this if you will be patient and listen to her question and ask what -- answer when she's asked. She's going to have a wrap-up question at the end to be sure that all things are being answered.

She's tried for the last forty-five minutes just to get specifications out of what Lupton didn't do before he was substituted for. This matter is not going to take forever. It's going to proceed in an orderly way.

Now, if you've got anything more that hasn't already been discussed to say about Mr. Lupton, let's do that because we've still got to have the specifications made about Mr. Briggs. He's changed a doctor's appointment to be here, and we're going to have this thing move forward in an orderly way.

THE WITNESS: Okay. May I get clarification? I'm not allowed to say what my own lawyer said to me?

THE COURT: No, ma'am, you're not, and you're certainly not allowed to not answer the question that's

asked of you.

THE WITNESS: Okay.

THE COURT: You are to answer the question that's proposed to you and not go off into all these sideways that you're going on. You're going to have to discipline yourself a little bit to present this case in a sensible way. You can do that; you're very bright. You can handle this thing in an orderly way, and I ask you to do that.

All right, Ms. Moody.

BY MS. MOODY:

Q. So, Mr. Lumpton was not your attorney. Just to recap, between the 9th or the 10th he produced an order, correct?

A. He ceased to be my attorney either on the 9th or the 10th on this charge. He continued to be my attorney on other, on the other charges.

Q. Okay. So, now that's when Mr. Briggs comes in to -- as a substitute. How did Mr. Briggs become your attorney?

A. The relationship with Mr. Lupton deteriorated very rapidly after the first trial returned a not-guilty verdict and I -- Mr. Briggs and I have known each other for twenty-three years now. And I talked to him about my frustration with Mr. Lupton and he said if you like, I can help with that.

Q. Okay. So, you went to Mr. Briggs, not Mr. Lumpton. You went to Mr. Briggs?

A. I, I don't know about went. I talked to him over the phone.
Q. Well, you talked to him. You contacted him?
A. Yes.
Q. Correct?
A. Yes. Yes.
Q. Okay. So when you contacted Mr. Briggs, were you able to tell him about your case, the facts about your case?
A. No. No. Why not? First, because ---
Q. Well, yes, I'm going to say why not.
A. Okay. Okay.
Q. Okay.
A. Okay. First, because we did not know whether Judge Barber was going to grant the substitution or not. And second, even though I've known Mr. Briggs for, for, for so many years, he is very temperamental and at times I tried to speak to him about it and he wouldn't, and that's even in the other -- in another transcript.
Q. Okay. So, you got in touch with Mr. Briggs. The judge ultimately allowed Mr. Briggs to be substituted as your counsel, correct?
A. Yes.
Q. Okay, and after -- and you knew you had a hearing or a trial on April 11th, correct?
A. Actually, I did not. You know, they, they say that I

should have been, but during the March 21st trial which -- what -- they, they set, they set the schedule right, right then. I wasn't sure it was or wasn't, but there was a great possibility that it would be.

Q. But you showed up on April the 11th for a trial with Mr. Briggs, correct?

A. Actually, I showed up on, on April 10th at 3 o'clock for a pretrial hearing which Mr. Lupton told me to come to.

Q. Okay. Now, who was your attorney at that pretrial hearing?

A. Both.

Q. Mr. Briggs and Mr. Lumpton?

A. Correct.

Q. And did Mr. Lumpton speak on your behalf to the court, or did Mr. Briggs speak on your behalf to the court?

A. Both did.

Q. Okay, and at that time, what motions were taken up?

A. There, there were discovery matters, but I reasserted that I need to have my Sixth Amendment right to speak for myself and that order preventing me from doing that is improper. I also brought to Judge Solomon's attention the tainting of the jury that happened on the 8th.

Q. Okay. So now at that time, did Mr. Briggs move for a continuance for you?

A. He did.

Q. Okay, and what happened with that continuance motion?
A. It was denied basically because Mr. Lupton -- and that's in the transcript -- had written to Judge Barber that Mr. Briggs did not need a continuance. And in the transcript, Mr. Briggs said I did not tell Mr. Lupton that, and Mr. Lupton said that's correct. He did not tell me that he wouldn't need a continuance; I just assumed that he wouldn't.
Q. Okay. So then on April the 11th, you went back to court with Mr. Briggs, correct?
A. I went to court and Mr. Briggs came very late.
Q. But you went with Mr. -- well, Mr, Briggs ---
A. No, I did not ---
Q. --- was representing you on that day. I'm not saying you ---
A. Ma'am, I ---
Q. --- literally rode in the car with him.
A. I, I think you ---
THE COURT: Dr. Faltas.
THE WITNESS: No, I ---
THE COURT: Dr. Faltas, please answer a direct question. This one's not hard. She asked you whether Mr. Briggs was representing you on April 11th when this case was tried. The answer is either yes or no.
THE WITNESS: Yes.

THE COURT: And I'm sure the answer is yes.

THE WITNESS: Yes, but the, the ---

THE COURT: You don't need to say anything else.

THE WITNESS: Okay.

THE COURT: She'll get to the next question.

THE WITNESS: Okay.

THE COURT: We're not going to stay here all night and do this. We are going to proceed in an orderly way. This is two lawyers you have citations of ineffectiveness. That's a very typical PCR case. If you'll listen to her questions and answer them, your positions on each of these lawyers is going to be in the record. Please.

All right, Ms. Moody.

BY MS. MOODY:

Q. So, Mr. Briggs shows up for court and he -- you go forward with the trial, correct?

A. Over, over our objections, yes.

Q. He moved for a continuance at that time, too, correct?

A. Yes.

Q. Okay, and that was denied?

A. Yes.

Q. So, when you went forward with that trial or you, you proceeded to trial, there were some pretrial motions, correct?

A. No, not other than the continuance. He made the

motion to dismiss based on the failure of speedy trial, but he did not have -- now, we're talking about not Mr. Lupton. Mr. Briggs?

Q. We're talking about Mr. Briggs.

A. He did not have the facts straight.

Q. Okay. So, we're going to come back to that.

A. Yes.

Q. But were there any motions that you wanted him to make such as the motion to dismiss that he did not make?

A. Oh, yes, many.

Q. Okay, and what were those motions?

A. Well, first the motion to dismiss. Second, the motion for lack of jurisdiction. Third, the motion to determine whether the charge carries jail time or not because I had in a separate matter, the City of Columbia itself had said that municipal charges that have a definite amount of penalty do not carry jail time. And that was something the City of Columbia had argued in a federal case where I was the plaintiff and they were the defendant, and the federal jurists agreed with that.

Q. Okay.

A. So, I wanted to get that on the record that it wasn't -- that this -- at least, whether right or wrong, that the city was precluded from taking one position in federal court and the opposite position.

Q. Okay. What other motion did you want Mr. Briggs to file?

A. Okay.

Q. Or make?

A. Okay. First, I also wanted him to have gotten those witnesses ---

Q. But we're going to come to that.

A. Yeah.

Q. But as to the motion, is there any other motion that he failed to ---

A. Absolutely. Absolutely.

Q. What's the other motions?

A. The, the motion was to dismiss the jury because it was tainted. Also to not choose a jury from a panel of only twenty-four jurors because the statute requires forty jurors. I had also researched the last argument rule, and I found out that it was -- that at least arguable that it's unconstitutional. I also wanted him again to -- and I tried to explain this to every -- yeah, I'm saying the motions, motions to, to...

Q. For last argument. That's where you left off.

A. Yes, ma'am, to -- that. Also the motion to, to dismiss for defect on ---

THE COURT: We've got that already.

THE WITNESS: Okay.

BY MS. MOODY:

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 ---

Q. We ---

A. --- adopt it under affirmation as all true except for typographic errors.

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?

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.

Q. Yes.

A. They said the cardboard is improper and you have to remove it within ten days. It was gone within ten days and, frankly, it wasn't a good idea to have the cardboard because if it rains, the cardboard will become wet and no

longer become a good barrier. So, I ---

THE COURT: Dr. Faltas, Dr. Faltas, all you've got to do is make the general statement that he wasn't prepared to try your case, didn't understand the facts. Getting, drilling down here into specifics about cardboard -- we're not going to be here all night.

THE WITNESS: Okay.

THE COURT: You don't need to do that, and it takes away from the effectiveness of your points to get sidetracked into every little factual detail. Don't do that.

THE WITNESS: Okay. All right.

BY MS. MOODY:

A. He failed to read *Florida vs. Jardines*, which is a U.S. Supreme Court opinion that had come up shortly before that and I had provided to him, and it said that they cannot go on somebody's property.

Q. So, he didn't make the motion as under that case?

A. Correct.

Q. Okay. Now, did you have an opportunity to discuss with him what you thought the defenses were? I realize it was two days. Did you have an opportunity to discuss anything with him?

A. Very briefly.

Q. Okay.

A. Because he would hang up. He hangs up; he hangs up on me.

Q. So, on that day on April the 11th, he went forward on the trial. You didn't have an opportunity to discuss with him. What, if any, investigation did he do you know of? Any?

A. I don't think he did any investigation. I don't know if ---

THE COURT: I understand that. This is all covered by the testimony you've given about the need for a continuance. And basically what you're saying is that since he didn't get appointed as counsel until two days before your trial, that he wasn't prepared. It's not a commentary on him as a person. He was not given adequate time to prepare your case and did not fully grasp all the facts that you wanted presented. I think that is kind of a general summary of what you're saying, is it not?

THE WITNESS: Yes, ma'am.

THE COURT: All right, and you don't need to go into every factual thing and everything that went back and forth between you and Mr. Briggs. I -- you've, you've well made your points on the record that lack of time for preparing for the case is a big issue about the ineffectiveness of Mr. Briggs because he didn't have the chance to get prepared as you wanted him to. Am I right?

THE WITNESS: Yes, ma'am, but there were other issues of active misconduct on his part.

Q. Okay. So ---

THE COURT: Well, let's, let's her ask it again.

THE WITNESS: Okay. So ---

THE COURT: I'm, I'm looking at this clock because we're, we're not going to stay here all night.

THE WITNESS: Yes, ma'am, but I've been for seven years now, seven years.

THE COURT: I understand all that, but, you know.

THE WITNESS: Yeah.

THE COURT: A lot of litigation sometimes interferes with the disposition of any litigation, and there are many swirling cases involved with this controversy. All I can do is try to get the one that we've got in front of us about the trial of this particular thing, and I'm going to try to do that with dispatch.

THE WITNESS: Thank you, ma'am.

BY MS. MOODY:

Q. All right, can you -- you're -- you alluded that there were some other things, and the one thing as far as you've alluded to me, what you're talking about, his conduct.

A. Yes, ma'am.

Q. Okay. Can you -- you felt like he was not civil to you in court, or what was it?

A. He was insulting and demeaning and causing me to lose credibility with the, with the jury and he...

Q. Okay.

A. He didn't -- I had asked him to qualify me as an expert, and that is done *in camera*, but he didn't even know to do that. He, he did it in the presence of the jury. He, he yelled at me. He said that he will slap me across the face.

Q. Okay. So ---

A. When I was trying to ask to be put back on the stand on redirect, which is my right to testify, he said what do you want to do? You've already killed yourself ---

Q. All right, Dr. Faltas.

A. --- with the jury.

Q. All right, Dr. Faltas.

A. Yeah.

Q. Now, all of these things combined caused you to be prejudiced?

A. It caused me to be falsely convicted. His, his opening said I won't go into any defenses. His closing was basically find her guilty. It's, it's -- it was a disaster, and I have put all -- and again I, I adopt under affirmation all the points I made in the twenty-two page document.

MS. KINARD: And, Your Honor, for the record I'd like

to object to that. From my understanding, this is a reference to her summary judgment motion.

Is it, Dr. Faltas? Is that ---

I'm sorry if that's improper to ask her that. I just wanted to make sure we're talking about the same document.

MS. MOODY: Your Honor, she supplemented her application prior to me being appointed and filed that summary judgment motion prior to me being appointed. I believe that is the document that she's speaking of.

THE COURT: Okay. Well, of course we've got better than summary judgment now. We've got a full exposition of these issues. So, I don't want to get hung up on that. It's basically the issues that you want -- she tried to place into ---

MS. MOODY: Into the record.

THE COURT: --- this case the issue that the state shouldn't even be given the right to go forward because the law is completely in her favor, and there was no genuine issue of material fact. That's what that motion for summary judgment was all about.

But right now we're trying the case itself. So, you're not going to get penalized for not pursuing it under the aegis of a motion for summary judgment. We're not, we're not going to deal with it that way. We're going to try the case as it stands.

MS. MOODY: Thank you.

THE WITNESS: I'm just saying ---

MS. KINARD: I'm sorry.

THE COURT: Just, just a second.

Yes?

MS. KINARD: That wasn't quite my point, Your Honor. I thought that this might be an issue of hybrid representation, but I have my dates wrong as far as when that motion was filed. It was before ---

THE COURT: Well, I tell you. Hybrid representation is all over the place in this case.

MS. KINARD: Yes, Your Honor.

THE COURT: Because of the -- and the Supreme Court alluded to that in this order of January the 7th of this year. But I hope we can get past that and talk about the real issues, which is she's challenging this conviction, and I think we lose focus when we get into this highways and byways. The basic thing is ---

MS. MOODY: She ---

THE COURT: --- in the trial of this case, we need to understand what went awry that you feel did not allow this case to be presented as you wanted it presented. That, that's what Ms. Moody is trying to ask questions about.

BY MS. MOODY:

A. And, and when, when I brought up the issue of Bogan

tainting the jury, Mr. Briggs said okay. I'll do a curative instruction, and I said no. You can't unring the bell. That prejudice cannot be -- and -- okay.

Q. So, in essence you ---

THE COURT: Well, we've -- I've already got that as a list of one of the things you're raising now, and you don't need ---

THE WITNESS: Okay.

THE COURT: --- to be concerned about that. And you say that because Mr. Lupton didn't attend the hearing, you lost the ability to really contest this, but Mr. Briggs was telling you right. You know, if you don't challenge it when they're being qualified, you lose it. But you've made the point that one of your specifications of ineffectiveness of your counsel is that they lost the ability for you to challenge the jurors being tainted by Judge Stephen Bogan's inappropriate remarks about you. That's basically that. I got that as one of the issues.

THE WITNESS: Thank you. Thank you, ma'am.

THE COURT: I understand.

BY MS. MOODY:

Q. And, and if I may state, you realize that all these, all these comments are within the transcript?

A. Yes, ma'am.

Q. Okay, and that's the transcript from April 11, 2013.

THE COURT: And I've got that right here, and I plan to scrutinize it.

THE WITNESS: And, and also the transcript from April 10th.

THE COURT: I've now got all of them here.

THE WITNESS: April 10th.

THE COURT: Don't you worry.

THE WITNESS: 20 -- yes. Yes, ma'am, and ---

MS. MOODY: So ---

THE WITNESS: --- because I care about people's comfort, as I said, I converted it to uppercase/lowercase, which is much more legible.

THE COURT: Well, I can read this just fine. I've got, I've got a ---

THE WITNESS: It doesn't tire your eyes?

THE COURT: No. I'm fine with this.

THE WITNESS: Okay.

MS. MOODY: Okay, so we can rest -- we can rely on the transcript as to the trial, correct?

THE COURT: That's right.

THE WITNESS: Yes.

THE COURT: And in the transcript, she's given a very adequate description now of things about which she complains. She doesn't think he was prepared. Nobody really was -- let her assert the things about the jury

taint she wanted to, and then in the course of the trial she's got a lot of contentions about the way Mr. Briggs comported himself to her and to the jury, and she's detailed those in her other filings, and I can read them in the record.

MS. MOODY: Okay. Thank you.

THE COURT: So, we've got issue. That's one of the issues, no question about it.

THE WITNESS: Yes.

BY MS. MOODY:

Q. Now, as to -- you were sentenced on April 25, 2013, correct, and you had another attorney that came in to your case. Can you tell the court how ---

A. Yes. Yes.

Q. --- Tristan Shaffer became your appellate counsel?

A. Okay. He had initially solicited to be my trial counsel, but Judge Barber refused to substitute him, and as soon -- actually, I had previously met Mr. Shaffer when he was a public defender and I had standby counsel. And he wasn't my standby counsel but he covered for somebody and he said something very complimentary to me. He said the office told ---

MS. KINARD: Your Honor, I object ---

MS. MOODY: Okay.

MS. KINARD: --- as to relevance.

BY MS. MOODY:

Q. So, let's, let's talk about ---

A. Okay. I, I ---

Q. So, you met Mr. Shaffer before?

A. Yes.

Q. And then after you got sentenced, you filed an appeal, a notice of appeal?

A. No. Actually, Mr. Briggs filed the notice.

Q. On your behalf. He filed the notice of appeal for you?

A. Yes.

Q. So, how did Mr. Shaffer become your appellate counsel?

A. He solicited the representation from Judge Manning, who had at that time become the administrative judge. And the terms of the appointment, I was not consulted at all, and basically it's that if I even talk to my appointed lawyer, I'm in contempt of court.

Q. Okay. Now, when you say your appointed lawyer, you're talking about Tristan Shaffer?

A. Yes.

Q. And he filed -- well, Orin Briggs filed your appeal, but Mr. Shaffer was going to write the brief?

A. Yes.

Q. Okay, and so you didn't have any conversation with Mr. Shaffer?

A. Very -- only when he called me. In fact, at one time he called me, and I didn't catch the phone and I called him back. So, he wrote to Judge Manning an email saying that I'm in violation and should be held in contempt of court for calling him.

Q. Okay. So outside of that violation, what did he not do as it relates your appeal?

A. Okay.

Q. Can you tell the court?

A. He didn't do anything. He didn't secure the supplemental transcripts which did not get secured, the, the city on its own return. Just the trial, two trial transcripts. He would not even go and copy them. They did not serve them on me or on Mr. Shaffer. Mr. Shaffer would not even go and copy them from the Clerk of Court's office. And, in fact, I was threatened that if I went to the Clerk of Court's office to read them, I might be arrested for contempt of court.

Q. Okay.

A. And so, so ---

Q. So, he didn't get, he didn't get the transcripts to adequately represent you in your appeal, your appeal?

A. He didn't read the transcripts; he didn't get the exhibits returned from the Columbia Municipal Court to the circuit court. None of that happened until during the

hearing.

Q. Okay. Now, let's, let's ---

A. Okay.

Q. --- reference what the hearing ---

THE COURT: Let me stop you right there. I think I can simplify this. All right, because of these delicts on the part of Mr. Tristan Shaffer, as Dr. Faltas sees it, she filed a motion *pro se* to relieve Mr. Tristan Shaffer and substitute back Briggs and Lupton to handle the getting up of her record on appeal. She was -- this is exactly what she was fussing about here was that Shaffer hadn't done anything to get the transcript and the documents and so forth to file an adequate appeal. And that filing on her behalf is in the record of these proceedings, and it's attached to the filings of August the 19, 2014 that led to Alison Lee's order. So, I think I've got that.

THE WITNESS: Oh, good.

THE COURT: What I'm saying.

THE WITNESS: Yes, ma'am.

THE COURT: I know ---

THE WITNESS: 20 ---

THE COURT: --- exactly what she's citing ---

THE WITNESS: 2013.

THE COURT: --- as errors on Mr. ---

THE WITNESS: 2013, not 2014.

THE COURT: Ma'am?

THE WITNESS: 2013, not 2014.

THE COURT: Well, I'm saying your filing where ---

THE WITNESS: Yes, ma'am.

THE COURT: --- you talk about ---

THE WITNESS: Yes, was ---

THE COURT: --- Tristan Shaffer.

THE WITNESS: Was August 2013.

THE COURT: It's ---

THE WITNESS: Not 2014.

MS. MOODY: That's part of the PCR application.

THE COURT: Yes.

MS. MOODY: Yes, ma'am.

THE COURT: All right.

MS. MOODY: That's a supplemental part that she did.

THE COURT: This is appeals.

(A PAUSE.)

THE COURT: Yes, 2013. You're right, Dr. Faltas, and I've got those here.

THE WITNESS: I, I was just saying that Your Judgeship misspoke about, about the ---

MS. MOODY: She, she has that. She has it.

THE COURT: I got it.

THE WITNESS: Yes. Yes.

MS. MOODY: So, we can rely on the record as far as

THE WITNESS: Yes, and ---

THE COURT: That's right.

MS. MOODY: --- what he did not do.

THE COURT: She, the citations she makes against Shaffer are right here in this file.

BY MS. MOODY:

A. Yes, and the reason I wanted them back, Mr. Briggs and Mr. Lupton, not that I was happy with them, is that I didn't want to have to babysit and spoon feed one more lawyer and, and get nothing.

Q. Okay.

A. At least they knew ---

THE COURT: We, we've got all that right there. You explained that completely ---

THE WITNESS: Yes.

THE COURT: --- in the filing that you made.

THE WITNESS: Yes. Yes.

BY MS. MOODY:

Q. So, what relief are you seeking from the court here today?

A. Okay. So, we didn't get the fact that then Mr. -- after ---

Q. You put it in your supplement, so when we said we rely on the record ---

A. Okay, yeah.

Q. --- for that ---

A. Yes.

Q. --- she's going to read that.

A. Okay.

Q. That's what she was saying.

A. Okay.

THE COURT: I got all that.

A. I just wanted to tell you that after Judge Lee ordered the supplemental transcripts and the exhibits, she did not allow me to come back and reargue based on that. So, I lost my one chance. She allowed me to ---

THE COURT: Reargue what?

THE WITNESS: The appeal. The appeal.

THE COURT: No, no.

MS. MOODY: This ---

THE COURT: She wasn't, Judge Lee wasn't -- she was dealing simply with the right to counsel.

THE WITNESS: No. She heard the appeal.

THE COURT: Yes, ma'am, but in this -- after that appeal was done ---

MS. MOODY: Then there was a hearing.

THE COURT: --- then it went to the -- that was the direct appeal.

THE WITNESS: Yes.

THE COURT: That you -- all right, that then went to the Court of Appeals. It's been dealt with; it's over. You don't need to worry about that because you are raising in a collateral way in these proceedings those very issues. So, don't worry that Judge Lee didn't have a chance to argue. That's part of what you say is the ineffectiveness of your counsel in not teeing them up. So, we've, we've got that.

THE WITNESS: Yeah.

THE COURT: I've got.

THE WITNESS: Yeah. I'm saying that she allowed me to argue, but when on December ---

THE COURT: She really couldn't expand the record, though, at that time. That was her problem. She wasn't trying to disadvantage you.

THE WITNESS: Yeah. I know.

THE COURT: But that should have been done in your trial.

THE WITNESS: Exactly.

THE COURT: And it wasn't. So, I, I got that.

THE WITNESS: Exactly. So, I'm saying that even when the exhibits were returned from the municipal court to the -- I did not get to come back and argue based on these exhibits and those supplemental transcripts X, Y, and Z.

THE COURT: But you're arguing those things. So, I've

got them here.

THE WITNESS: Okay.

THE COURT: Don't worry about it.

THE WITNESS: All right. All right. All right. All right.

BY MS. MOODY:

Q. And so when -- and I hate to belabor this any further.

A. So, so after that, Mr. Briggs became ---

Q. Wait, wait, wait ---

A. --- my counsel to the Court of Appeals, and he walked out on me from the Court of Appeals appeal. So, that was dismissed. So, that's also his ineffectiveness. He walked out on me without protecting my rights.

THE COURT: Yeah. I got that.

THE WITNESS: Okay.

BY MS. MOODY:

Q. So, one last thing, okay?

A. Yes.

Q. You're asking the court to give you relief?

A. Yes.

Q. And that release is -- relief is to overturn your conviction?

A. To overturn my conviction, to hold that the City of Columbia is not a court ---

Q. But ---

A. --- and cannot be a court, to refund my bond, and to hold that that ordinance is unconstitutional.

Q. Well, you do realize that the court here today can only address that your counsel was ineffective ---

A. No.

Q. --- and that you were prejudiced in some way?

A. Actually, I, I do not realize that. I realize there are several other issues that ---

THE COURT: Dr. Faltas.

THE WITNESS: Yes.

THE COURT: Let me, let me solve that one for you.

THE WITNESS: Yeah.

THE COURT: Just what you told your counsel is what you said in your petition for post-conviction relief.

THE WITNESS: Yes.

THE COURT: And what I understand you're saying to me, you want the conviction vacated. You're saying that your counsel was also ineffective in not challenging the legality of the city court, so that's an issue already here. I've got that.

THE WITNESS: Yes, ma'am.

THE COURT: So, I think you're protected in terms of raising all these issues.

THE WITNESS: Okay.

THE COURT: I have them.

THE WITNESS: Okay.

THE COURT: And they each one will need to be looked at and decided upon. So, no worries there.

THE WITNESS: Okay.

THE COURT: No worries.

THE WITNESS: Okay. The only reason I'm saying them from the witness stand is that I realize that pleading is not evidence. So, that's why I am ---

THE COURT: Sure, but you're -- this is a verified pleading on your part, and you've taken the witness stand and affirmed what you said in these pleadings. So, I will take that as your affirmed testimony about it. Don't worry about it.

THE WITNESS: Thank you, ma'am.

THE COURT: Yes, ma'am.

THE WITNESS: Thank you, Judge.

MS. MOODY: No further questions for this witness, Your Honor.

THE COURT: All right, Ms. Kinard.

MS. KINARD: Yes, Your Honor.

CROSS-EXAMINATION BY MS. KINARD:

Q. Dr. Faltas.

A. Yes, ma'am.

Q. I'd like to briefly go back to speaking about Mr. Lupton. You said he -- you rejected his advice and that

was regarding pleading guilty. Is that correct?
A. I rejected his advice in the 20 -- in the March 21, 2013, trial. He advised me to plead guilty not only to that charge but to two others, and to also not take the witness stand in my own defense, and that's where I rejected his advice. And thank God the jury returned a not-guilty verdict.
Q. We're just talking about this charge.
THE COURT: Yeah. That, that doesn't have anything to do with this.
THE WITNESS: Yeah.
THE COURT: I mean, you won that one, so you ---
THE WITNESS: Yes.
THE COURT: --- don't need to worry about that further.
THE WITNESS: Okay.
THE COURT: We're talking about his ineffectiveness in the zoning matter.
THE WITNESS: Yes, ma'am.
THE COURT: And I think that's what you were asking for clarification on, was it not ---
MS. KINARD: Yes, Your Honor.
THE COURT: --- Ms. Kinard?
MS. KINARD: Yes, Your Honor.
THE COURT: Okay. I think you got that.

BY MS. KINARD:

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?

A. Okay, please do not call it a rubbish charge. There was no rubbish on the land.

Q. I understand.

A. There was no allegation of rubbish on the land.

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.

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 ---

THE COURT: Well, whatever.

THE WITNESS: --- with those inverted buckets.

THE COURT: Let's not get hung up on that.

THE WITNESS: Okay. Okay.

THE COURT: Ms. Kinard. Ms. Kinard.

BY MS. KINARD:

Q. What was the overall advice that Mr. Lupton gave you on how to dispose of the ordinance violation case?

A. To plead guilty.

Q. Was there any contingencies with that?
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.

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.

MS. KINARD: I understand that, Your Honor.

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?
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 ---

Q. That's an easy phrase. We'll move on.

A. Yes.

Q. Do you have ---

A. No, he never ---

Q. --- a copy of the order substituting Mr. Briggs for Mr. Lupton?

A. Believe it or not, I don't have it on me, but it exists and, in fact, Judge Solomon on the transcript of April 10, 2013, he marked it as a court exhibit. And with it was also a letter or an email from Mr. Lupton to Judge Barber, and I think I previously alluded, and that's in the transcript where Mr. Lupton admitted that he spoke out of school, so to speak, on behalf of Mr. Briggs.

Q. You stated that Mr. Lupton failed to procure evidence that was about complaints by your neighbor. Is that correct?

A. Yes. Yes, ma'am, and actually may -- he's here now. He ---

Q. I just needed a yes or no. Thank you. Did you provide with -- did you provide him any means or suggestions on how to get that evidence?

A. Absolutely.

Q. Okay. Thank you.
A. Oh, God, absolutely.
Q. Thank you.
A. He even complained that I provided him too much information. He, he -- and I even wanted to make sure that he gave the information I provided to him as reciprocal discovery to the city so the city doesn't claim they didn't get it.
Q. Thank you.
A. And he said it was 1 gigabyte of, of evidence.
Q. Moving on, you stated Mr. Shaffer was -- solicited your representation. Is that correct?
A. Yes, ma'am, but, you know, I, I just want to say in fairness so that my testimony is, is not inaccurate. Initially I liked Mr. Shaffer very much. I even called him the son I never had and ---
THE COURT: But he didn't adequately prepare your appeal, and that you have ---
THE WITNESS: Correct.
THE COURT: --- put forward at length in your filing.
THE WITNESS: Not only that. He was trying to get me entrapped into contempt of court for even contacting him.
THE COURT: I think we understand what she's contending there, Ms. Kinard.
MS. KINARD: Yes, Your Honor. We certainly do.

BY MS. KINARD:

Q. So, you would disagree that -- well, strike that, please. Did Mr. Shaffer represent you on any earlier charges?

A. Not on earlier charges. I had -- you know that I, thank God, I had defended myself successfully *pro se*.

Q. I ---

A. And, and this is -- relates to something that Her Judgeship said, that I have a matter pending before the Court of Appeals. It arises out of the false harassment charges that were general sessions, tried by Judge Newman, and I represented ---

THE COURT: Yeah, that doesn't have anything to do with this. Was Shaffer involved in that case at all?

THE WITNESS: He was involved in my attempting to recover my defense expenses, and that's what's ---

THE COURT: Well, that, that's enough of an answer. She doesn't need the details. She just wanted to know whether he had some other association with you.

THE WITNESS: Yes, yes, that, that is the association, but he also didn't, didn't do the job on that one. He walked out.

THE COURT: That, I can't deal with that one right now.

THE WITNESS: Yeah. No, I ---

BY MS. KINARD:

Q. He represented you on issues prior to this. Is that correct?

A. I would say contemporaneously with it, yes.

Q. There wasn't a parking ticket at any time?

A. Oh, that. It wasn't tried.

Q. Okay. That's fine. Thank you.

A. And, and eventually, eventually that was dismissed and I got my parking fee back, but it was a federal case because of that. I went to federal court saying they cannot -- it's -- it, it violates some U.S. Supreme Court decision that if the parking ticket is $15, but if I appeal it I face a fine of $500 and thirty days, and that's like retaliation ---

Q. Thank you.

A. --- for exercising my right to appeal, and eventually -- and that is where the city ---

Q. Dr. Faltas, I was just trying to establish a relationship ---

A. Yeah.

Q. --- between you and Mr. Shaffer. I thank you for that answer, and just to make sure I understand, it was you that contacted Mr. Briggs to represent you on this charge. Is that correct?

THE COURT: I think she's testified that that is

exactly the way it happened.

MS. KINARD: Thank you, Your Honor.

THE COURT: That she contacted him, but he didn't -- her, her complaint is he had such little time that she was very disadvantaged by not having a continuance so he could deal with it.

MS. KINARD: Thank you, Your Honor, I'll ---

THE COURT: In a more prepared way.

THE WITNESS: And in addition, if I may say had Dr. Faltas been allowed to represent herself, it wouldn't have taken this long. It wouldn't have ---

THE COURT: Dr. Faltas, I can't deal with that. That's the Supreme Court's order, not mine.

THE WITNESS: You were on the Supreme Court.

THE COURT: Not -- no, ma'am. I'm a circuit judge.

THE WITNESS: Okay.

THE COURT: All right, Ms. Kinard.

MS. KINARD: Your Honor, no further questions.

THE COURT: Thank you so much.

Ms. Moody, anything in reply?

MS. MOODY: No, Your Honor.

THE COURT: All right. Now, we've got Mr. Briggs here and I'm just going to make a suggestion, and I don't know whether it will be taken with any kind of alacrity or not.

We've got both Mr. Briggs and Mr. Lupton here and

quite honestly, as I read the contentions that Dr. Faltas is making, they are very much able to be figured out by reading these transcripts because what she's complaining about is in-court performance and failure to file certain motions and take certain positions and so forth on her behalf, and I can divine all that from the record, to the extent y'all allow me to do that, but I don't want to restrict anybody.

I will tell you that my availability is going to be at an end about 5:15. My very expectant law clerk ---

THE WITNESS: Congratulations.

THE COURT: --- needs to go pick up her daughter.

THE WITNESS: Congratulations.

THE COURT: And I have got an obligation I got to attend to for my family at 5:30. Now, that doesn't mean that we can't carry this thing over if we need to, but I do believe we've got most of what we need about Briggs and Lupton.

So, Dr. Faltas, you've testified. You're good. You may resume your seat.

THE WITNESS: Thank you.

(THE WITNESS EXITS THE STAND.)

THE COURT: Let's see what we need to do. They would basically be Ms. Kinard's witness, not Ms. Moody's. I think Ms. Moody is satisfied with the picture that's been

painted at the present time about what was done and what was not done.

MS. MOODY: Yes, ma'am.

THE COURT: By these lawyers but, Ms. Kinard, I don't want to restrict you unduly. So, if you want to offer these folks in a focused way, that's fine. It's purely up to you.

MS. KINARD: Your Honor, I feel I would be, I would be ineffective if I did not present them, at least as briefly as possible. Hopefully within twenty minutes.

THE COURT: Well, here's what I'm going to do. It's really not fair to Dr. Faltas or to Ms. Moody or to you to jam these two lawyers in a short period of time just because of my scheduling difficulty. So, I'm not going to put you through that.

Here's what I would suggest you do. I don't know when your next availability will be because you've spent a whole day here and you're a busy lawyer, Ms. Moody, but I am wondering whether you all would agree let me set another day to complete this. I have got tomorrow morning available, but I hate to ask -- I mean, this is Christmas season. I'm sure that you lawyers are jammed up with things.

You can come and have a seat, Dr. Faltas.

DR. FALTAS: I need to -- this is an exhibit here.

THE COURT: Oh. Sure. That, that's your boundary things?

DR. FALTAS: Yes.

THE COURT: Yes. All right. Mark this as Dr. Faltas's exhibit, Madame Court Reporter. That will be Exhibit Number 2?

COURT REPORTER: 1.

THE COURT: 1, Exhibit 1.

(BUCKET MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 1.)

THE COURT: All right. So, Ms. Moody, what I'm going to do is this, and Ms. Kinard and Mr. Lupton and Mr. Briggs. I feel sorry for all of you because y'all stayed here the whole day very kindly, but I do not want to restrict Ms. Kinard from putting on testimony she feels that, in fairness, to represent the state she needs to put on. So, I'm going to leave it to you two to consult amongst the two of you, and also of course with the two lawyers involved and Dr. Faltas.

If you'd like to pick out a date in January, I'm not assigned but I feel quite confident that Chief Justice Beatty would assign me to a day y'all pick to complete this proceeding, and I think that's the fairer thing to do. I don't want to disadvantage people by trying to rush through this thing and still not have everything on the record that

you want to put on the record. And, quite honestly, if I don't force Ms. Moody to close her case right now, you may be able to, in a focused way, put whatever else you want in by way of filed documents or the like, Ms. Moody.

MS. MOODY: Yes, ma'am.

THE COURT: So, Ms. Kinard, I know that's not the thing you wanted to hear, but tell me if you can handle this.

MS. KINARD: Certainly, and I have two questions, though.

THE COURT: Yes.

MS. KINARD: One. If upon further review of my file I find that the transcripts do speak for themselves, could we then just turn it over to you for consideration?

THE COURT: Certainly, certainly, and we'll then, of course, consult with Ms. Moody again to see if there's anything else that needs to be filed on behalf of Dr. Faltas. So, we'll, we'll keep that in a reasonable state until you all have a chance to look everything.

MS. MOODY: Your Honor, if I may?

THE COURT: Yes, ma'am.

MS. MOODY: I filed a response to motion to be relieved of counsel and motion ---

THE COURT: And I've held it in -- I've told -- I'll be clear about what I've said. I've held that abeyance. I

did not relieve you at the start of these proceedings because I felt like it would go better that way.

MS. MOODY: Well, I'm going to withdraw my motion.

THE COURT: Very good.

MS. MOODY: Just so that we can finish this up for Dr. Faltas.

THE COURT: I think that's the smartest thing to do. She, she -- if she goes on appeal from this thing, and I don't know how I'm going to rule, so she may love what I rule, but if she does not and wants to go on and appeal, I think the positions are fairly outlined here. She's not giving up anything, and I told her that to begin with by going forward with this proceeding.

MS. MOODY: And the only other thing, Your Honor, is -- I think we put it on the record. I just want to make the court aware that I had a motion to amend and make a more definite statement. Can I serve that on your office at this time?

THE COURT: Yes, you may. Yes, you may and, of course, goes without saying file with the clerk as well, but yes, that would be fine.

MS. MOODY: Okay.

THE COURT: And that, that's going to be helpful to you, Dr. Faltas, because she has got the legal -- you certainly know a lot about the law in this area, and I'm

not trying to denigrate your knowledge of the law. But Ms. Moody knows what needs to be filed to keep this thing focused.

And so I'm going to certainly liberally allow you to file anything you think is appropriate to further amending the pleadings to focus on the issues.

MS. MOODY: Okay.

THE COURT: And that will help me, too, to be honest with you.

MS. MOODY: Thank you, Your Honor.

DR. FALTAS: Ma'am, and I don't want to be her lawyer, but I think she has done too much work for the $800 and I ---

THE COURT: It's a sin what they pay them. It really is. It's not anything Ms. Kinard has any control over either.

DR. FALTAS: I suggested to her that she ask for a funding order for more work if for no other reason she had to come from Rock Hill twice.

THE COURT: Well, we'll talk about that at the end, but Ms. Moody is a decent and generous person. I served in the legislature with her mama, and she comes from good folks, and she herself is a good person, as is Ms. Kinard. So, we've got some fine lawyers in this room, and I think we'll try to resolve this thing in a sensible way and in a

focused way.

(A PAUSE.)

(ORDER MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 1.)

(LETTER MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 2.)

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 7TH DAY OF DECEMBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/*ELIZABETH B. HARRIS*, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MARCH 13TH, 2017

State of South Carolina)
)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2016-CP-40-1444

Marie Assa'ad-Faltas,

Applicant,

vs.

State of South Carolina,

Respondent.

Transcript of Record

June 14, 2017
Columbia, South Carolina

B E F O R E:

The Honorable Jean H. Toal, Judge

A P P E A R A N C E S:

Leah B. Moody, Esquire
Attorney for the Applicant

Jessica E. Kinard, Esquire, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

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WEDNESDAY, JUNE 14, 2017

(COURT RESUMES AT 2:19 P.M.)

THE COURT: Let me recite for the record that this is a resumption of proceedings in the matter of Dr. Marie Faltas against the State of South Carolina. This is a post-conviction relief matter. It's 2016-CP-40-1444. I conducted a previous hearing on this matter; it was adjourned and is now resumed.

Dr. Faltas is present in the courtroom with her attorney, Leah Moody of the York bar. Ms. Jessica Turner is present representing the State of South Carolina.

MS. KINARD: Sorry to interrupt, Your Honor. It's Kinard.

THE COURT: Oh, Kinard. I don't know why I want you to be Turner. I'm sorry.

MS. KINARD: Thank you.

THE COURT: Ms. Jessica Kinard is here representing the State of South Carolina, and she has with her?

MS. KINARD: This is Brian Givens, a law clerk in our office.

THE COURT: She has her law clerk. There are several witnesses in the courtroom. I know that attorney Orin Briggs is one, and perhaps that is the only witness we have present, and with that, Ms. Moody, you may proceed.

MS. MOODY: Thank you, Your Honor. At this time, Your

Honor, we call Mr. Briggs to the stand.

THE COURT: Very good.

ORIN G. BRIGGS, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

THE COURT: Take your time, Mr. Briggs.

WITNESS: Well, Your Honor, I guess off the record I'm seventy-nine now. I don't know that I show that. I've always lived a quiet, clean life, but I find that I'm not quite as ginger as I used to be in my younger days, and, in fact, I'm proud to say that I have toned down my rhetoric. I used to be very impatient as a young fellow. And now when people tell me I'm going to have to wait, I say I'm going to wait patiently, and it took me forty years to learn to say that.

THE COURT: Very well.

Ms. Moody, your witness.

MS. MOODY: Thank you.

DIRECT EXAMINATION BY MS. MOODY:

Q. Mr. Briggs, could you please state your full name for the record?

A. Yes. It's Orin Gail, G-a-i-l, Briggs.

Q. And, Mr. Briggs, you served as Dr. Faltas's attorney?

A. In the -- what they refer to as the waste in the property she owned next to that apartment complex where she once lived.

Q. Now, were you the original attorney on that case?
A. I was not.
Q. Okay. Who was the original attorney?
A. I think Mr. Lumpton [sic] had -- was and, in fact, he tried the case just the day before that, and I happened to be in the courtroom just watching.

WITNESS: But I need to note at this time that I got less than twenty-four hours' notice that I was going to have to be the trial lawyer the next day, Your Honor.

BY MS. MOODY:
Q. And who gave you that notice?
A. Dr. Faltas did.
Q. Okay, and what, I guess what made you take this case for Dr. Faltas?
A. She knows better than I do, but I think we both decided that -- I have off and on represented Dr. Faltas for about twenty years. The first matter was an immigration matter, which again we, she and I, successfully won, and that's when she became a permanent resident of the United States.
Q. Okay.
A. So, she of course essentially has citizenship, and off and on a number of things. And since we're talking about all the issues, the work I did for her over twenty years was, like, eighty percent *pro bono*.

Q. So, in this case were you *pro bono*?
A. Yes.
Q. Okay, and you just stated that you had twenty-four hours' notice before you went in to trial?
A. Less than twenty-four hours. In other words, at the end of the April 10th hearing, I was told some time shortly after that that Mr. Lumpton and Dr. Faltas, my understanding was, had come to an agreement that he would not represent her in the next proceeding, and so I was asked to do it.
Q. Okay. So as relates to this proceeding, you tried -- you did this trial alone for Dr. Faltas, correct?
A. That's correct.
Q. Okay, and what, if any, strategy did you have an opportunity to discuss with Ms. -- Dr. Faltas?
A. Well, I didn't ever represent her during all the negotiations and proceedings, but I had some knowledge and, in fact, had been out there and seen the property and knew what the city was charging and knew what the condition of the property was.

And the thing I would point out is that while they made a big deal about any standing water in a situation like that would breed mosquitoes, there was no evidence in the hearing or the trial that mosquitoes actually existed.

Q. So, backing up for one second. Did you ever entertain

any kind of plea offer on this case?

A. No. We did not discuss that. I think Dr. Faltas and I had a brief discussion of the case before we left the courtroom but other than that, it was just our communication as we sat at the trial table.

Q. Can you tell the court about the, the rubbish definition? I believe that was an issue where Dr. Faltas wanted information provided to the jury.

A. Okay. There, there were two, two issues that came up. One was I attempted to qualify Dr. Faltas as a public health expert; there is no question in my mind that she is. Not only is she a -- have a doctor's degree, but she has a master's degree in public health from the University of North Carolina, but this was one of those situations where the trial judge cut me off and did not let me finish my argument, and so he denied that request that she be qualified as an expert in public health matters.

Q. Okay, and you say he cut you off. What -- was there a reason why he cut you off?

A. I would only have to speculate, and I don't think I should do that. There were a couple other situations that came up that gave me the impression that the judge had talked to somebody about me and heard things about me, and I was accused of doing things not only that I've never done, but I've never even thought about doing. But that's

-- we'll get to that as, as the issue comes up.

So, I'll, I'll give one other illustration. Of all the objections and motions I made in that trial, the judge only granted one in my favor. I have -- I've been practicing law since 1967. I have never been in a trial where I was restricted to only one favorable ruling in motions that I made.

Q. Okay.

A. Except, except for that one.

Q. Okay. So, you're saying that you made motions and objected to certain evidence coming in in this case?

A. And, and motions of the way evidence was presented in the case. I, I did not bring them today, but I have about seven pages of summary of evidence, and I'm quite proficient in knowing those rules, and so my objections were not just I object. They would be I object because of so and so. And of course you know and the court knows that it's not my burden to prove. That the one presenting the evidence has to justify the evidence coming in place, but I don't think there was any following of that rule by the judge.

Q. Now, there was an issue of the doctrine of separation of powers between the executive branch and the municipal -- municipality. Do you recall discussing that with Dr. Faltas?

A. I do not dis -- I do not recall that in those words and I, I'm -- if I'm wrong, you can consult with your client, correct me.

I think we're talking about her argument that there is nothing in the Constitution that, that justifies municipalities having trial courts. My -- we, we -- she and I have argued about this a dozen times. My position was that since they have the authority to enact laws, they have inherent power to enforce those laws by arrest and by trial. That, that's, that's the disagreement she and I have.

Q. Okay. So as to that argument, did you make that argument to the court on that day?

A. No. I don't think I ever addressed the issue of whether or not the, the city had the authority to conduct criminal trials. But I believe it was one of those arguments she made when the judge allowed her to make some constitutional arguments, and I believe there were about twelve of those, but I will probably mention that again. I've got it listed further down.

Q. Okay. As far as the city's actions in takings, I believe she made an argument or she asked you to make an argument the city's actions constituted a takings of her land. Do you recall having that conversation ---

A. I, I think she did.

Q. --- with her?

A. I think that was one of those twelve -- again, the judge allowed her to present some arguments on her behalf, and I think that was one of them she presented.

Q. Okay. So, was this yet another issue that you all disagreed on?

A. We, we never talked about that. She just -- I have always, if asked, specifically requested the court to allow her to speak on her own behalf.

WITNESS: Your Honor, I apologize for disagreeing with the courts, but I've always felt that the restriction on her first to not be her own lawyer in civil matters and also not be her lawyer in criminal matters -- later on that criminal matter was changed because there's very, very clear and strict law from the U.S. Supreme Court that says if a person is intelligent enough and knows enough about the court proceedings, they have a constitutional right to defend themselves in criminal matters.

At this time, as I understand it, she has that right to defend herself in criminal matters and -- but I don't know what the status was at this particular time. So, I would defer to her as to whether or not she could have represented herself.

BY MS. MOODY:

Q. Well, well, I'm trying to get at the issues that she

wanted you to raise. So, if I understand you correctly, you asked the court to allow her to make these arguments, correct?

A. I don't know whether I -- I probably just said Your Honor, if you remember, Dr. Faltas had requested to present a few matters on her own behalf, and that -- some judges will do that. Some judges won't. See, there's no question in my mind that Dr. Faltas is quite capable of representing herself.

Q. Let me interrupt you right there.

A. Right.

Q. We're not talking about whether she can interrupt -- excuse me, whether she can represent herself. I'm trying to get to the fact whether or not these issues that she has alleged, whether you all discussed them and whether you made those arguments.

A. We did not discuss them; I'm not sure exactly why. I suspect that she was tired after all day trial on the 10th, but we did not have any discussions about the substance of, of this case. And so I had to take what I knew of it factually, having been out there and seen the situation, knowing what the city charged her with, and having some brief discussion with her before we started the trial.

Q. Okay. So, did you have a position as to whether the city's actions constitute -- constituted a takings of her

land?

A. I did not present that issue to the court, but my position would be that -- and I'm not going to give an ultimate, ultimate opinion, but I thought, as in many of the other cases, she had conflicts with the city. That the city was, if you will, picking on Dr. Faltas simply because she told them -- and I don't know what the words were because I was never there, but she told them on a number of occasions that they didn't know what they were doing.

Q. Okay. So, why didn't you make that argument that the city's actions constituted a takings of her land?

A. I just didn't think it was there because -- let, let me insert something here, and you can ask me another question then.

One of the problems that I had as the attorney is that an engineer from DHEC had come over there and looked at the property, and he had written a letter, I believe the form was, and he said there was no evidence of any violation of DHEC regulations. Dr. Faltas failed -- I'm going to repeat that. She failed to subpoena that witness. Would have been the only witness besides Dr. Faltas we would have had.

Q. Okay. Let me ask you this. At -- well, were you going to subpoena or get in touch with her witnesses such as this DHEC individual, this DHEC person? Were you going to get in contact with them when you took on the

case or ---

A. There's no way I could have contacted somebody when I was notified at 5 or 6:00 in the afternoon. They're already closed, and we had to be in court at 9 or 10. I, I just didn't have time. It's not -- it wasn't my responsibility. Dr. Faltas clearly knows how to do subpoenas.

Q. Well, did she indicate to you at any point in time that she had witnesses and that they might have been subpoenaed?

A. I -- there was a letter and I knew about the letter from -- I got his name here. John Ansel, I believe it is, A-n-s-e-l. So, the question was did his opinion cover the whole group of issues that the city was raising, or did it just cover what DHEC would be regulating, and that, that was never discussed because he was not called as a witness.

Q. Okay, but I'm asking you did she explain to you that a subpoena was sent out, or that she has spoken with her -- with him, or the previous attorney had subpoenaed this gentleman?

A. We never had any discussion about subpoena. It was just obvious that it had not been done because Mr. Ansel did not show up for the trial.

Q. Did you request a continuance at that time?

A. No, I didn't.

Q. So, you didn't request a continuance due to not having a witness available to present to the court?

A. No, I did not.

Q. Is there any reason why?

A. I don't think she asked me to do that, and by that time I felt the judge was hostile to not only the defendant but me, too, and I'll further explain that as we go along.

Q. Okay. All right. So, as to Dr. Faltas'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*, did you all discuss that issue?

A. We did discuss it, and I made the decision that -- I think we were six or seven, eight short or something like that. I just felt like that that judge wasn't going to give it the time of day and on appeal it, it would not be a definitive reason for the appellate court to send it back to the trial court.

Q. Okay. Now, you -- well, I'll come back to that. Did you all discuss -- or what, if anything, did you and Dr. Faltas discuss regarding the final argument to the jury?

A. We never had any discussion about that. In, in most, most trials I have my opening statement and my closing statement written out. In fact, I settled a case about five or six weeks ago, and at that time I already had my entire trial notebook completed. So -- but again you got

to remember I had less than twenty-four hours to try this -- to get ready to try this case.

Q. So, at any point -- we've gone through these issues. At any point did you -- you allege that the judge at that time was hostile, but at what point do you consider requesting a continuance more important than angering the judge?

A. I, I don't, I don't think that issue came up in my mind. And, and while Dr. Faltas suggested a number of things to me and as the record shows interrupted me, oh, at least a dozen times, maybe two dozen times simply because she disagreed with particular words I chose to use, we never discussed that, that question you asked me.

Q. So, you all never discussed moving for a continuance so she could have the DHEC witness available?

A. No, we did not.

Q. So, what was your defense in this particular case if you weren't going to use the DHEC attorney -- excuse me, the DHEC witness to show that there was no violation?

A. Most of my cross-examination questions dealt with the fact that while there were some 55-gallon drums that were not tightly closed on top and rainwater could go in there, in fact there was -- they presented two pictures. One situation had existed for an entire year that they pointed out. There was no evidence introduced in the trial that

showed that any collection of water resulted in the breeding of mosquitoes or other vermin or anything like that.

Now in addition to that, one of their allegations that they could prove was that she had -- she would call building materials, they would call junk lying on the ground and not secured and just caused what they call rubbish. And so that was essentially the two issues that we debated.

Q. And so again I just have to ask it one last time.

A. Yes.

Q. How did -- other than the cross-examination of the witnesses from the city, you didn't think it was important to have a DHEC person available to testify as to the issue on breeding mosquitoes and the violations?

A. I did not simply because of the timeframe. And I, I, in my opinion, if I would have asked the day before -- that is, if I would have sent an email to the judge and told him that I believe I need to subpoena a witness from DHEC, that might have gotten his attention, but he would not have granted it the morning of the trial.

Q. Now, the other -- you alluded earlier that the judge was hostile towards you.

A. I'll, I'll give you two illustrations and, and I will just note that this particular court has seen me in action

and knows me and, frankly, I have a reputation within the bar that I'm probably too honest to be a really good -- be a really outstanding lawyer.

For instance, I have five rules for witnesses when I use them in court. The very first one is tell the truth, and the reason I have five is if somebody can't remember five rules, they're not going to remember twelve rules.

And Dr. Faltas and I have had this discussion before. I generally even in briefs limit myself to five or six discussions because I believe down deep in my heart and in my brain that the more issues you discuss, the more likely you are to weaken your strongest arguments, okay? That's the first one.

The, the other one is -- there's actually two others. The judge accused me of using a strong voice as an attempt to influence the jury. Well, I'm sorry, but that's a lie pure and simple. I have told a number of people that when I'm in the courtroom, nobody goes to sleep because I know I have a strong voice, but I don't have an inside voice. I don't even have an inside voice when I'm at home. I just, I'm just not that kind of person, and I don't even remember what the subject matter was, but he accused me of that in a meeting between the two counsel and with -- and the judge out in the hallway in, if you will, in an *in-camera* discussion. Yet -- well, I'll, I'll do that later.

One other thing. He cut me off when I tried to -- well, he cut me off when I tried to present Dr. Faltas as an expert witness, but he also cut me off when I tried to show him that Dr. Faltas has a unique mechanical ability. I have absolutely no mechanical ability. I have a wife and two daughters and they will not even let me use a screwdriver at the house because I just don't have that kind of ability.

Now, here's the reason I make that discussion. Dr. Faltas has manufactured and created maybe a dozen useful devices that she has in her home.

MS. KINARD: Your Honor, I'd respectfully object. I think this is getting a little bit off course.

THE COURT: Well, this was covered ---

WITNESS: He denied, he denied ---

THE COURT: Now, wait a minute. Wait a minute ---

WITNESS: Okay, Your Honor.

THE COURT: --- Mr. Briggs. Let me rule.

This was covered, Ms. Kinard, in the trial of this case.

MS. KINARD: Yes.

THE COURT: I recall these facts quite well, and I think what he's doing is simply explaining what he was trying to elicit here. So, I'm going to overrule and allow him to testify.

Not forever, Mr. Briggs, but to the point and I think you are getting to the point.

WITNESS: I will. I will.

THE COURT: Yes, sir.

MS. KINARD: Thank you, Your Honor.

WITNESS: I'll try not to be too long winded, Your Honor.

BY MS. MOODY:

A. Counsel, Dr. Faltas last time -- and I haven't been to her new apartment, and she's been there two or three years. My wife has been in communication with her, but this was, this was the last time I represented her, except that I did file some pleadings in the supreme court in the case where she was trying to get reimbursed for expenses in one case, okay? That's the only other time I represented her since this case.

All right, the reason I was -- the point I was trying to make is she has a stand made out of what I call angle iron and it's, it's circular and she has an entire computer on that stand. So, all she's got to do is turn it thirty degrees or ninety degrees or whatever and get to the typewriter or get to the printer or whatever. It's an ingenious device. It, it, it, it could probably be sold if it was made out of the right material. I don't know that angle iron is very attractive, et cetera. But the judge

wouldn't let me tell the story.

Now, the, the other part of it that I never got to is the fact that her father was a well known, very distinguished engineer. So, she got that ability by inheritance and she had that ability, and yet the judge wouldn't let me tell the story. So, again, I thought that was an act of prejudice.

Q. All right. So, you're saying all of those situations made you think that the judge was being hostile towards you?

A. Yes, and there's one other, too, and I might as well cover it now. Oh, and I, I, I briefly mentioned this, but it's worth repeating. In all the objections and motions I made -- I read the transcript again, and unless I missed one, the judge granted only one of my objections in the entire trial. I have -- I've been practicing law since 1967. I have never had a case like that where a judge didn't grant at least half of my objections because, as I say, I have a pretty good knowledge of the evidence rules, including the ---

WITNESS: My favorite one, Your Honor, is not only does it have to be relevant, but has to be competent. That is, if it -- if it's too prejudicial, even if it's relevant, it's inadmissible, and I love that rule, but I'm sorry. There are, there are -- I do a lot of First

Amendment, religious freedom-of-speech cases. There are judges in the state that don't know that law.

BY MS. MOODY:

Q. Okay. Well, let me ask you this. After you all went through the trial and got a verdict, did you represent Dr. Faltas on the appeal?

A. I did not. I recommended to her and she agreed and I sent it to -- and I always forget the name but the appellate, the state appellate office that does appeals for indigent people.

Q. Okay.

A. In fact, I have a memo in here that if I had copies -- well, I think I may eventually, if we're going to take a break, maybe get copies and let counsel see it and introduce that. It is, it is basically positive. It's not critical of Dr. Faltas, but I thought they ought to have the background.

Q. Okay. So, did you file the notice of appeal on the case?

A. No. I, I didn't even file the notice of appeal.

Q. Okay, at the -- after you got the verdict and everything, you all -- did you all -- apparently you discussed appealing the case?

A. I did and I recommended to her -- I don't remember -- we didn't have any correspondence, but I recommended to her

that we get the state agency to do it. I mean, that's all they do is appeals, and I talked to -- it wasn't a lawyer. I talked to a, a paralegal or somebody, and they expressed interest in the case. I sent them this memo, and they indicated to me yes, they would take the case. So, they filed a notice of intent.

Q. Okay. All right, and so after that, you handed off the case to the state appellate counsel. You did no -- did you do any other work outside of writing your memo?

A. I did not do any work. The only thing I have in my notes is that the -- of course this went to, I believe, the circuit court. Identified nine issues that I had raised so I, I cite that as a, a, a fairly comprehensive presentation of the issues in the case.

MS. MOODY: I, I beg the court's indulgence.

(A PAUSE.)

BY MS. MOODY:

Q. So, Mr. Briggs, just a few ---

A. Yes.

Q. --- other questions. So, you -- someone took the case and did the appeal to the circuit court here, correct?

A. That's correct.

Q. Okay. Did you ---

A. I never saw any pleadings, and I had no contact with them once they agreed to take the case.

Q. Okay. So, did you take the case after it was denied here on -- from the circuit court level?

A. No.

Q. So, you didn't represent Dr. Faltas in the court ---

A. Anymore in this case, no. Just the trial.

Q. I'm sorry?

A. Just the trial.

Q. Okay.

MS. MOODY: Thank you. No further questions.

THE COURT: Very good.

Ms. Kinard, your witness.

MS. KINARD: Thank you, Your Honor.

CROSS-EXAMINATION BY MS. KINARD:

Q. Thank you for being here, Mr. Briggs.

Is it fair to say that prior to becoming counsel of record on that day in April, you were familiar with Dr. Faltas and her situation?

A. Okay, let me make sure I state it this way. I never represented her any time during the charging, the debate, the discussion about what should or should not be done about correcting the problem or whatever. But as being not only a lawyer but a friend of hers, I went out there I guess three or four times, and I was aware of the situation, and I might as well tell this part of the story now.

The reason the city never did file another charge against her after this conviction is -- and I'm going to read what I put in the memo to the appellate section.

(A PAUSE.)

A. I don't see it right now, but I'll find it.

After the trial and to help her so there wasn't another citation, I asked the members of my Sunday school class if anybody had a trailer, small trailer that they were not using any longer. One guy had one; he gave it to me. It was larger than this, this table here but not much larger. My oldest daughter and her son -- I mean, and her husband, who was a marine and served in both Iraq and Afghanistan, at my request picked up the trailer, took it over to Dr. Faltas's property and, in fact, had a flat tire on the way, and the, the son-in-law bought a new tire and put it on there. He's very mechanical. He's a supervisor, a plumber that works on commercial matters, and they took it upon themselves to place that trailer near the other containers that were sort of, I guess, a semicircle that was only, only probably a fourth of the property. Didn't go all the way around the property, and they collected everything that was on the ground and put it in that trailer. And as I -- far as I know, Dr. Faltas did not have any more trouble with the city about, quote, the rubbish on her property, okay?

Q. Yes, sir, and you didn't answer my question, which was basically to get more information about your personal relationship with her. And I was curious if it would be fair to say that you represented her as a favor.

A. Well, the very first case I, I did it not only because I thought she deserved representation, but I thought the Immigration was straining at gnats, if you will. There was a, there was a, quote, legal violation she made, and I won't get into that because it's not -- but it was a very small thing, and they waive those things all the time, and fortunately we actually tried the case in the Eleventh Circuit and I lost it. But the, the lawyer I dealt with at the Justice Department on behalf of Immigration in my opinion was the most professional and nicest lawyer I've ever dealt with in, in forty-six years of practice. He finally persuaded his client: listen, you're taking too much time; you're spending too much money; and we ought to go on and settle this case. And he recommended to them and they did, in fact, change her status to that of permanent resident. So, we won that case, okay?

I know of all the other, quote, legal problems or disagreements or whatever she had in her service as a doctor. She, in fact, worked in four different medical schools as a professor, and I won't get into that because it's not relevant, but I, I'm aware of most of the history