

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

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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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O. BRIGGS - CROSS-EXAMINATION BY MS. KINARD

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1 she had. She had one case she tried herself in North  
2 Carolina that I didn't know anything about.

3 But I guess during the twenty years -- and I would  
4 defer to her about this -- we have probably talked two or  
5 three times most of the weeks until after this trial. I  
6 have tried to not have any more conversation with her  
7 because I, I'm going to retire at the end of this year when  
8 I finish one case, and I will cite those later in another  
9 context, and so I'm not taking any new cases. I'm not --  
10 trying not to do any more *pro bono* work and all that, and  
11 -- okay?

12 Q. Yes, sir. Thank you. So, so, to paraphrase to see if  
13 I'm correct, you had a comfortable working relationship  
14 with Dr. Faltas?

15 A. We argued about a lot of things, but we never came to  
16 blows. And I believe the only time I ever told her what  
17 amounted to if you were a man, I would already slapped you  
18 upside the head, and that was in this trial. But I can't  
19 remember doing that before that, but there are a lot of  
20 judges that if we called them as witnesses, they would say  
21 she's very difficult to deal with.

22 Q. Thank you. My goal in asking these questions is to  
23 get a feeling of the investigative process that you might  
24 have needed to undertake, especially considering the late  
25 notice of her request for you to represent her. And by

1 that, I, I'm trying to, to see if you would feel  
2 comfortable stating that because of your relationship with  
3 her, you had a head start in a sense on this case ahead of  
4 anybody else that would've gotten that late-night call.

5 A. Well, I did not have any discussion with Mr. Lumpkin  
6 [sic] -- Lumpton about whether he had anything on this  
7 case. There just wasn't time to do that, but my, my  
8 standard practice is I, of course, file a Rule 5, and I  
9 always forget the name of the case, the *Brady* case, and ask  
10 for anything they've got in their file. Obviously I didn't  
11 have time to do that.

12 And, in fact, in one case Dr. Faltas and I both sort  
13 of overlooked something. It was the Walmart case where she  
14 was accused of stealing something and, and on her own she  
15 finally did enough investigating to prove that at the time  
16 she was supposed to have stolen something, the price was a  
17 different price than it was in the evidence they presented.  
18 And what happened, we found out they had done a report  
19 during the middle of trial, and I should have asked for a  
20 mistrial then and did not, but I try to get everything the  
21 other side has.

22 In fact, the case I just settled was a jail abuse case  
23 in Newberry, and I tried to get the Walmart people who --  
24 my client had been in there three times before he was  
25 arrested, but anyway -- and they just wouldn't cooperate

1 with me.

2 So, usually -- particularly when you've got somebody  
3 out of state, you're not going to get a response to a  
4 subpoena, and you're not going to get a response from a  
5 letter and all, but, but if I have the time, I try to make  
6 sure I've got everything in my hand that the state has or  
7 the city has.

8 Q. Yes, sir, and in this case in particular, did you have  
9 the opportunity to speak with Dr. Faltas about any work  
10 that she and Mr. Lupton had done in preparation?

11 A. I do not think we had any discussion that night, and  
12 we obviously didn't have time to talk about it in the  
13 morning. But I, I have to say Dr. Faltas knew that I had a  
14 fairly good knowledge of the situation and what she had  
15 been charged with.

16 Q. Thank you. Ms. Moody questioned you regarding  
17 continuances, and it, it seemed to me she was talking about  
18 two specific instances, one regarding the subpoena of Mr.  
19 Ansel from DHEC, and then another specific matter.  
20 However, I just wanted to clarify some of your testimony.

21 In reading the transcript of this hearing, on page 8  
22 you do move for a continuance. Do you recall moving for a  
23 continuance at the beginning of the hearing?

24 A. I did not recall that, but I, I probably did, but as I  
25 tell you again, I have no evidence of, of why this

1 particular judge took a dislike to me. But I read people  
2 extremely well, and I'm telling you he didn't like me, and  
3 I don't think I ever -- have ever criticized a judge. I  
4 have maybe briefly argued, but when I'm -- when I -- my  
5 rule is when the judge makes a ruling, I sit down. I don't  
6 carry on an argument after a judge makes a ruling.

7 So, I'll give you, I'll give you this example. In,  
8 what, '67 to 2007, that's -- is that seventy years?  
9 Anyway, it's more than sixty years. I have only had two  
10 threats of being found in contempt. In neither one did I  
11 ever pay any money. The judge in a family court matter  
12 just forgot about it, and the other judge didn't actually  
13 say I was to pay a fine. Just warned me. So, I think  
14 that's a fairly good record.

15 And, yes, I tend to be argumentative, but that's my  
16 job. You know, it's the old saying: Your Honor, I don't  
17 mind you asking questions, but don't lose my case for me.  
18 So, that's always been my attitude, but I, I honor the  
19 court. I, I, I, I have no reason -- and I'm certainly not  
20 a mind reader. So, I don't have any idea where this  
21 hostility came from.

22 Q. Certainly. Would you rest on the transcript as being  
23 accurate?

24 A. Yes. I've, I've read the entire trial transcript. I  
25 think it's accurate.

O. BRIGGS - CROSS-EXAMINATION BY MS. KINARD

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1 Q. Thank you, sir. Is there -- would you like to  
2 describe in your own words your relationship with Dr.  
3 Faltas when it came to representing her in this?

4 A. Yes. There is, there is one thing that I need to  
5 share with the court. I know Dr. Faltas extremely well.  
6 For those who don't know it, she is a very intelligent  
7 person. She speaks four languages fluently. She claims to  
8 be what we call a Coptic Christian and unfortunately -- I  
9 don't remember when it was, but in the last couple of  
10 months, we had a group of Coptic Christians killed in  
11 Egypt, as I recall. So, I, I know a lot about Dr. Faltas.  
12 I've helped her move one or two times, but then I found out  
13 that was too frustrating for me, and I didn't, didn't get  
14 involved anymore.

15 WITNESS: But I'm going to read you something that she  
16 wrote, Your Honor, and I have a copy of it here somewhere  
17 that I will pass up, and I will be glad to stop and let the  
18 -- both counsel read it if they want to.

19 THE COURT: All right. Well, let's have the bailiff  
20 take that.

21 WITNESS: Maybe I ought to read it for them. I'm  
22 going to read the last paragraph in this document.

23 THE COURT: All right. Well, let's -- let me see it,  
24 and then I'll let you show it ---

25 WITNESS: It's something ---

1 THE COURT: --- to them.

2 WITNESS: --- she submitted ---

3 THE COURT: Just, just ---

4 WITNESS: --- in this case, Your Honor.

5 THE COURT: Just a second, Mr. Briggs.

6 (A PAUSE.)

7 THE COURT: All right, I'm going to hand this back to  
8 the bailiff, and he will ---

9 Ms. Moody, Ms. Kinard is doing the examining right  
10 now. This is what he's proposed to read. Please take a  
11 look at it and then pass it to ---

12 WITNESS: I didn't even think about making four  
13 copies, Your Honor, this morning.

14 THE COURT: Okay, counsel can take a look at it  
15 together. There's no problem with that.

16 WITNESS: Just the last paragraph.

17 MS. KINARD: May I approach, Your Honor, and return it  
18 to him?

19 THE COURT: Certainly.

20 WITNESS: Did the, did the other counsel get to read  
21 it?

22 MS. KINARD: Yes. We both have a copy.

23 WITNESS: Okay.

24 THE COURT: All right, Mr. Briggs.

25 WITNESS: I'm just going to read from this document,

O. BRIGGS - CROSS-EXAMINATION BY MS. KINARD

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1 which is the front page of a, a document that was filed  
2 with the circuit court entitled Supplementation of PCR  
3 Application with Exhibits, and I'm reading the last  
4 paragraph, Your Honor, and it reads as follows:

5 Said transcripts corroborates the pathological,  
6 intractable behavior of Orin Briggs in all trials  
7 and hearings in the past two decades.

8 I have to assert, Your Honor, I don't know what -- how  
9 she knows what I did in trials and hearings she didn't have  
10 anything to do with.

11 Decades in which Orin Briggs apparently on  
12 purpose goes beyond ineffectiveness to ---

13 And, and, and I would underline this, Your Honor.

14 --- to intentionally harm his clients.

15 Paragraph.

16 Specifically those of color and those who are not  
17 of the Bob Jones religion, whatever that is.

18 End of paragraph. I mean -- anyway, close, close  
19 paragraph.

20 By latching on to the most losing argument, even  
21 when winning arguments and objections are of the  
22 judge ---

23 I'm sorry.

24 --- objections are staring him in the face, then  
25 obsessively ---

1 And, and, and in parentheses again.

2 --- and often impolitely.

3 End of paragraph.

4 Repeating the losing points to the irritation of  
5 the judge and jury. Orin Briggs exhibited that  
6 same pathology in Dr. Faltas's April -- 11 April  
7 2013 and 25 April '13 sentencing which are  
8 subject to this PCR application. Said transcript  
9 also proves that despite Columbia Municipal Court  
10 Judge Dennis high skills and integrity, the City  
11 of Columbia is not able to constitutionally own  
12 and operate a court at all.

13 I mentioned that before. She, she has an argument  
14 about that. She feels very strongly about it. I'm quoting  
15 again the last sentence:

16 Deeper analysis shall, God willing, be filed  
17 forthcoming.

18 Your Honor, I won't use the word we don't like to use  
19 in court, but I'll just say that evaluation of me is one  
20 hundred percent wrong. At this time, I have six clients.  
21 I have stopped taking new cases. Two of them are  
22 African-American churches, one that we had up on Richland  
23 Street that was in the newspaper. And I have a case now  
24 going on in Darlington where the fire marshal, without any  
25 authority or any excuse or reason, cut off the -- both the

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1 electricity and the water of a church.

2 I have been studying First Amendment law -- that is,  
3 free speech and freedom of religion -- exclusive of the  
4 cases that involve whether or not a particular church could  
5 get money from the federal government. I really never had  
6 any interest in those particular cases, Your Honor, but I  
7 have read everything from *Wisconsin vs. Yoder* in 1959 all  
8 the way up through *Hobby Lobby*.

9 And I'm sure this court has read the case just before  
10 that, which was in 2011 about the Iraq funeral wherein the  
11 church group came and for, for the record, the district  
12 court and the court of appeals -- federal, of course --  
13 awarded the plaintiff, the father, who, according to the  
14 record, actually had significant emotional distress. We  
15 have all seen cases where people were faking that. We know  
16 that, but according to the record, this guy was really --  
17 this father was really disturbed. He was awarded \$5  
18 million by the district court in actual and punitive  
19 damages.

20 When that case got to the U.S. Supreme Court, the U.S.  
21 Supreme Court upheld religious freedom nine to -- I mean,  
22 eight to one, eight to one. Now, what's the difference  
23 between \$5 million and eight to one? I'll be very brief  
24 because it's not directly relevant, but it is about -- it  
25 does show to what extent I go in researching matters in

1 preparing for cases.

2 The court said that except for a, a -- I always have  
3 trouble remembering all six of the reasons for judging  
4 First Amendment, but one of them is, is fighting words.  
5 Except for fighting words and the case where -- Judge, if  
6 you want to help me with the name, you can -- but where  
7 somebody is in a place where they can't remove themselves  
8 and, and the people still exercise their free speech, only  
9 in those two cases do you even consider the adverse effect  
10 on the hearer. That's what that case says about the  
11 funeral. It's ---

12 THE COURT: I'm, I'm very aware of the line of cases,  
13 as you, and I've heard you many times in very well  
14 delivered First Amendment arguments. I'm particularly  
15 interested in those issues and very familiar with what  
16 you're talking about.

17 WITNESS: And, and, and ---

18 THE COURT: Mr. Briggs, I think you have very  
19 eloquently responded to what you feel is an incorrect  
20 statement about your professional honesty and your  
21 professional acumen. So, don't, don't feel like you need  
22 to pursue that any further. The court knows you and knows  
23 of your honesty and professional acumen.

24 And, you know, it's tough sometimes when you have  
25 ineffectiveness of counsel cases, but they're not attacks

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1 on your veracity or your decency as a person. It's a legal  
2 discussion about these particular issues in this particular  
3 case. So, don't be disquieted by what may be some  
4 intemperate remarks made. They don't -- that, that has  
5 nothing to do with what my judgment will be about these  
6 issues.

7 WITNESS: Yeah.

8 THE COURT: It's about whether the issues that are  
9 raised are legitimate ones.

10 WITNESS: Your Honor, I have, I have actually tried to  
11 prove that in three or four cases, and I was not successful  
12 in any of them. The courts aren't very fond of PCR  
13 hearings. Not that they're -- not their -- not that  
14 they're biased or anything like that, but it's -- there's  
15 not a, there's not a high success rate in, in arguing ---

16 THE COURT: I've written ---

17 WITNESS: --- PCR hearings.

18 THE COURT: I've written many an opinion granting  
19 post-conviction relief when it's warranted.

20 WITNESS: Well, Your Honor.

21 THE COURT: It doesn't have to do with the decency of  
22 counsel or the goodness of counsel or even the professional  
23 ability of counsel. It often has to do with the context of  
24 a particular case in which matters were covered or were not  
25 covered.

1           So, again don't feel disquieted or feel any need to  
2 prove your decency and your integrity as a lawyer. I've  
3 known that since I was right behind you in the class of '68  
4 in law school.

5           WITNESS: You -- in fact, I, I thought my class was  
6 maybe one of the best classes that went through. We were  
7 the first class, I think, that had over a hundred members,  
8 Your Honor, and you know a number of those. Billy Wilkins,  
9 Walter Cox, and I always forget his name, the judge who was  
10 a, a court of appeals judge from Waltherboro, the big ---

11           THE COURT: Howell, Bill Howell.

12           WITNESS: Bill Howell.

13           THE COURT: Well, we digress with these things.

14           WITNESS: Yes, we are.

15           THE COURT: Let's get back ---

16           WITNESS: Yes.

17           THE COURT: --- On target with what this case is  
18 about.

19           WITNESS: I, I only have one other point unless  
20 counsel has some other questions.

21           THE COURT: All right.

22           MS. KINARD: I do.

23 BY MS. KINARD:

24 Q. Just to clarify your statement, and I'd ask for short  
25 answers if possible. Did you argue points that you knew

O. BRIGGS - CROSS-EXAMINATION BY MS. KINARD

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1 would not be effective in this hearing?

2 A. I'm sorry. What?

3 Q. To refute the statement that you just read, did you  
4 argue points that you did not think would be effective in  
5 Dr. Faltas's favor?

6 A. No, but Dr. Faltas knows that -- about the rule that I  
7 said. I normally try to confine myself. I have, I have  
8 three rules.

9 Q. Yes, sir. I don't mean to cut you off, but we've  
10 discussed those, and I believe that ---

11 A. She, she knows. She knows how I, how I try to limit  
12 the number of issues I'm going to argue. She, she clearly  
13 knows that.

14 Q. Yes, sir, and you believe you performed to the best of  
15 your ability in representing her in this matter. Is that  
16 correct?

17 A. I think I performed better than I, I would be expected  
18 to with only -- was less than twenty-four hours' notice.

19 Q. Thank you.

20 MS. KINARD: And, Your Honor, if I may for the record  
21 note that this passage that he read was submitted before  
22 Ms. Moody was appointed?

23 THE COURT: Yes.

24 MS. KINARD: And ---

25 THE COURT: I'm aware and I have it right here. I was

1 following along as Mr. Briggs was reading the passage, and  
2 I understand.

3 MS. KINARD: Thank you. Your Honor.

4 THE COURT: It was a *pro se* filing, and again that's  
5 why we have Ms. Moody here.

6 MS. KINARD: Absolutely. Thank you, Your Honor. I  
7 have no further questions.

8 THE COURT: Very good.

9 WITNESS: Your Honor, if, if I could just point one --  
10 I had, I had -- well, I had about thirteen points, but I  
11 did not try to make all of them.

12 The other point I would make is on appeal, the, the  
13 circuit court did recognize nine issues that I had  
14 effectively raised at the trial level.

15 THE COURT: Yes, I'm looking ---

16 WITNESS: So, I think that's a pretty good ---

17 THE COURT: Right. I'm looking at ---

18 WITNESS: Pretty good ---

19 THE COURT: --- Judge Alison Lee's order ---

20 WITNESS: Pretty good ---

21 THE COURT: --- where she covers the issues.

22 WITNESS: And I'll be glad, of course, ask any --  
23 answer any other questions other counsel has.

24 THE COURT: Anything further, Ms. Moody?

25 MS. MOODY: Nothing further.

T. LUPTON - DIRECT EXAMINATION BY MS. MOODY

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1 THE COURT: Very good. You may come down, Mr. Briggs.

2 WITNESS: Thank you, Your Honor.

3 (THE WITNESS EXITS THE STAND.)

4 MS. MOODY: Your Honor, at this time I would like to  
5 call Mr. Ted Lumpton [sic].

6 THE COURT: Very good. Please come around, sir.  
7 Please stand for the bailiff's administration of the oath.

8 THEODORE N. LUPTON, BEING DULY  
9 SWORN, TESTIFIES AS FOLLOWS:

10 THE COURT: Ms. Moody, your witness.

11 MS. MOODY: Thank you, Your Honor.

12 DIRECT EXAMINATION BY MS. MOODY:

13 Q. Mr. Lumpton, am I saying your name correctly, Lumpton?

14 A. Lumpton.

15 Q. Lumpton.

16 A. There's no M.

17 Q. Okay. Thank you. Could you please state your full  
18 name for the record?

19 A. Theodore Nichols Lumpton.

20 Q. And ---

21 THE COURT: L-u-p-t-o-n, correct, sir?

22 WITNESS: Yes, Your Honor.

23 THE COURT: Thank you.

24 MS. MOODY: Thank you.

25 BY MS. MOODY:

1 Q. At some point, you represented Dr. Faltas, correct?

2 A. Yes. I was appointed on -- the case that's relevant  
3 here, -- I was appointed in January of 2013. I represented  
4 her through the end of April 2013.

5 Q. Okay, and during that representation, did you have the  
6 opportunity to meet Ms. -- Dr. Faltas?

7 A. Repeatedly.

8 Q. When was the first date you met with her?

9 A. I don't recall the first date that I met with her face  
10 to face, but I do know that within a couple of hours of  
11 Judge Barber appointing me to the case that she had called  
12 me. So, I spoke with her at length the very first day that  
13 I was appointed.

14 Q. Okay, and did you have an opportunity to prepare for a  
15 trial in this case?

16 A. I prepared on each of the cases.

17 WITNESS: Your Honor, this was -- I was appointed sort  
18 of as a global package. She had, I believe, if I remember  
19 correctly, two separate trespasses, a public disorderly, an  
20 assault, and what I call the rubbish case or the property  
21 management case, and I prepared each of those for trial.  
22 There was an expedited order, order for an expedited  
23 disposition on these. So, it was a situation where I  
24 prepared each of those to be tried very quickly.

25 BY MS. MOODY:

T. LUPTON - DIRECT EXAMINATION BY MS. MOODY

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1 Q. Now, at any point did you have any kind of offer made  
2 to you to resolve all of these cases?

3 A. As always, I always try and see if there's some way to  
4 resolve a case in my client's best interest. There were a  
5 number of discussions that were had, specifically related  
6 to the case we're here about today. The city and I  
7 discussed that and got the city prosecutor to agree that if  
8 she simply cleaned up the property, that ---

9 DR. FALTAS: That's a lie.

10 A. --- they would dismiss the ---

11 DR. FALTAS: That's a lie.

12 A. --- the case.

13 DR. FALTAS: That's a lie. That's a lie.

14 THE COURT: Just, just, just ---

15 DR. FALTAS: And there is an email. I'm just ---

16 THE COURT: One moment. One moment.

17 DR. FALTAS: I'm sorry.

18 THE COURT: One moment. You can't interrupt the  
19 witness; you must let the witness testify. Then  
20 examination will be made, but you can't interrupt the  
21 witness. That's just absolutely not -- I won't let any  
22 witness interrupt you, and you cannot interrupt this  
23 witness.

24 All right, continue, Ms. Moody, and continue, Mr.  
25 Lupton.

1 WITNESS: Thank you, Your Honor.

2 BY MS. MOODY:

3 A. Like I said, in regards to this specific case, I  
4 worked out that and, and he agreed -- at the time the  
5 prosecutor was David Fernandez -- that he had agreed to  
6 dismiss. There were other plea negotiations for global  
7 pleas, but specifically related to this I got the city to  
8 agree that if -- that, that they would dismiss if she just  
9 cleaned the place up. I conveyed that to the defendant,  
10 and she absolutely rejected it, saying that she didn't  
11 think that there was anything wrong with what she had on  
12 her property.

13 Q. Okay. After you discussed that with Dr. Faltas, was  
14 it at that point -- were you prepared to go to trial at  
15 that point, or did you begin to prepare to go to trial  
16 after she rejected the offer?

17 A. I had, I had begun preparing for trial basically upon  
18 getting all the discovery. The process was ongoing. I was  
19 in process of preparing. I was -- I prepared more  
20 afterwards. I was preparing all the way up until I was  
21 relieved as counsel and replaced by alternate counsel. You  
22 know, with any case, I don't stop preparing even in the  
23 middle of trial. I'm still looking at everything ongoing.

24 Q. Okay. What, if any, subpoenas did you issue as  
25 relates to this case?

T. LUPTON - DIRECT EXAMINATION BY MS. MOODY

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1 A. I did not issue any subpoenas. I looked at the case.  
2 We -- I discussed it with Dr. Faltas. I went out to the  
3 property. I walked the property; I looked at it. It was  
4 absolutely an issue that I believe that the -- factually  
5 that -- you know, I, I understand that her opinion of the,  
6 the stuff in -- on the property was that it was perfectly  
7 acceptable, but I saw absolutely no way that a reasonable  
8 jury was not going to agree that what was on that property  
9 was in violation of codes.

10 Q. So, now ---

11 A. There were, there were a number of other issues with  
12 relation to the case that I did believe were issues that  
13 could win. I believe that the city had made some  
14 significant -- okay, sorry.

15 Q. Hold on one second. This is just as to the subpoenas.  
16 So, you had not contacted DHEC or, or was that Dr. Faltas  
17 who contacted DHEC? Who contacted DHEC?

18 A. I did not contact DHEC that I recall. Now, I, I did  
19 speak with several witnesses about the case, but I don't  
20 recall any of them were from DHEC.

21 Q. So the witnesses, they would've been laypersons living  
22 in the area, or who ---

23 A. The ---

24 Q. --- were those witnesses?

25 A. Investigators related to the case, as well as ---

1 Q. Investigators?

2 A. I did speak to people that lived in the area but not  
3 specifically about the issues related to that case. But  
4 specifically related to the Property Management Act, I  
5 spoke with investigators that were involved with the case.

6 Q. And these investigators worked for who?

7 A. As far as I know, all of them worked for the city. I,  
8 I -- it's possible I talked with the DHEC investigator, but  
9 I don't recall doing that.

10 Q. Mr. Hansel -- Ansel, do you recall speaking with him?

11 A. I would -- I, I have no recollection of what their  
12 names were. I know that at least one of them was the  
13 person who wrote the ticket.

14 Q. John Ansel, he was an employee for DHEC?

15 A. I, I can't recall.

16 Q. Okay.

17 A. I, I don't recall speaking with him, but I don't  
18 recall the names of the individual. I do know that the  
19 person who wrote the ticket, that I spoke with him. Beyond  
20 that, I don't recall any of the names.

21 Q. So, you didn't have any subpoenas that needed to be  
22 served on any witnesses?

23 A. I did not, no.

24 Q. Okay.

25 A. I did not have any subpoenas for anybody.

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1 Q. Okay. So, you got relieved the -- how far before this  
2 case went to trial?

3 A. Well, as far as relieved, it was a substitution of  
4 counsel and that was -- my recollection, it was done the  
5 day before.

6 Q. And was that with Judge Barber or was that with Judge  
7 Solomon?

8 A. I don't recall. What I do remember that happened was  
9 that Dr. Faltas was not, she was not happy with my  
10 representation because I told her that I believed that,  
11 factually, that a jury would believe that the items on the  
12 property violated the act, but that I felt that there were  
13 a number of problems with the case of a legal nature that  
14 would be successful at trial, and I -- you stopped me  
15 before. I can go into some of that if you want, but...

16 Q. So, okay, I will come back to those issues, but -- so,  
17 you didn't have subpoenas. Did you meet with the, the  
18 city's counsel for somewhat of a pretrial conference, or  
19 did y'all meet with the court to go through the issues for  
20 this case?

21 A. Yes as to both. We had a number of pretrial  
22 conferences, and I spoke with the city prosecutor on a  
23 number of occasions about what -- this case and other  
24 matters.

25 Q. So, as to going into those legal issues that you spoke

1 of, were those issues that the court would need to rule on  
2 or were there jury -- were those issues that the jury would  
3 have to determine?

4 A. It was primarily legal issues, which the court would  
5 rule on the legal issues.

6 Q. So, did you file any motion to dismiss based those --  
7 on those arguments or those legal issues that you speak of?

8 A. Not prior to going to court, no. I would have raised  
9 those issues at trial; I would have raised the issues at  
10 trial related to notice and a number of other things  
11 related to that.

12 Q. Okay. So the pretrial, what I'm terming as pretrial,  
13 was it considered a pretrial where you -- different courts  
14 do it different ways, so it ---

15 A. It would probably be more accurately described as  
16 status conferences rather than pretrial hearings because  
17 there was no legal matters -- well, let me rephrase that.  
18 There were some general legal matters raised such as, you  
19 know, representation issues, things like that. But  
20 generally speaking, the trial motions were handled on each  
21 of the cases I represented, and would have on this case,  
22 were handled at trial.

23 Q. Okay.

24 A. And I was successful on other cases, but I didn't  
25 represent her at trial on those.

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1 Q. Okay. So, the motions that you would have presented  
2 at trial, can you now go into what those motions would have  
3 been?

4 A. There was -- the charging documents were, I think,  
5 improper. They basically wrote a ticket that had -- that  
6 cited a couple of references to property management codes  
7 but didn't specify a specific code, nor did the -- nor did  
8 they provide any kind of explanation of what she was being  
9 called upon to answer. Basically, they just stapled a copy  
10 of several pages of codes and said you violated some of  
11 these without telling her what she was being called to  
12 answer.

13 I discussed the notice issues with her, and as she put  
14 it, she refused to let me get her off on a technicality,  
15 and that was why she expressed to me that she was going to  
16 get Mr. Briggs to represent her. She was dissatisfied.  
17 She felt that I was trying to get her off on a  
18 technicality, as she put it, and she wouldn't have that.  
19 So, she got Mr. Briggs, and what I was told was that she  
20 told him that I wouldn't represent her, which of course was  
21 not true, and that -- so he had to, and then I spoke with  
22 Mr. Briggs about the changeover. He expressed that he was  
23 willing to do it. I am not going to stop somebody from  
24 getting counsel of their choice if that counsel is willing  
25 to represent.

1 I offered him everything I had. He said that he had  
2 the discovery material, which I know she had every bit of  
3 what I had and more probably, but she had everything I had.  
4 And since she refused to go forward on the legal motions  
5 that I proposed, he didn't get that and, you know, he was  
6 offered everything I had but didn't want it.

7 Q. Okay. So, the legal motions that you, you referred to  
8 as she refers to them as a technicalities, had you had an  
9 opportunity to discuss that with the city and present those  
10 motions at any point?

11 A. Again, trial motions I would make at trial. I, I'm  
12 not going to -- and I'm not going to sit there and tell the  
13 city how to fix a problem with the case against my client.  
14 I think it would be ineffective assistance of counsel if I  
15 tell the city, hey, you've got this problem. If you do X,  
16 Y, and Z, you can fix that problem and you can get a  
17 conviction on my client, and that's not my job.

18 Q. Okay. So, you felt like if you gave it to them ahead  
19 of time, they would've come back and cured the, the issue?

20 A. I, I can't say that they would have, but they  
21 certainly would have had the opportunity. And if I were  
22 prosecuting it, I would certainly fix it if, if I was aware  
23 of a problem of that magnitude ahead of time.

24 Q. Okay.

25 A. And as by way of example, one of the other charges in

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1 that package that I represented her on, they wrote the  
2 ticket against her for the entirely wrong statute. So,  
3 when we went to trial, I raised that issue at trial and  
4 judge ruled in my favor, dismissed the case.

5 Q. Against Dr. Faltas?

6 A. Correct.

7 Q. Okay. So ---

8 A. Had I done that a month ahead of time, then the city  
9 could have rewritten that ticket for the correct statute,  
10 re-served it on her, and we would have been stuck going  
11 forward on that trial, but instead of having the trial, I  
12 got a dismissal.

13 Q. So in that instance, she allowed you to get the tech  
14 -- win on the technicality?

15 A. On that instance, I didn't even discuss that with her.  
16 It was a situation where I noticed the incorrect statute,  
17 and I just raised it.

18 Q. All right. So, you only represented her -- you  
19 represented her on other issues, other cases. You didn't  
20 get to trial on this particular situation, and it is your  
21 testimony that she asked -- or she indicated that she  
22 wanted Mr. Briggs to represent her?

23 A. Yes, because she didn't like that -- and I, again, I,  
24 I, I told her my legal opinion was that factually, I  
25 believe the jury will find you guilty. I certainly would

1 have argued not to find her guilty. I have had a number of  
2 clients. They almost -- every client I have gone to trial  
3 with, I have said, you know, there is a good chance that  
4 you will be convicted. The state typically doesn't go  
5 forward at trial unless they feel that they've got a good  
6 case. It is not my duty to tell a client I think you're  
7 innocent. It is my duty to represent them to the best of  
8 my ability.

9 I told her I think that they have sufficient evidence  
10 to convict you. Doesn't mean I wouldn't try the case.  
11 I've won many a trial where I think that the evidence  
12 should have gotten a conviction, but I was able to suppress  
13 evidence or I was able to convince a jury to look at the  
14 holes in the case, that sort of thing. I would have done  
15 every bit of that here. I would have tried my best, just  
16 as I did on every other case she had, but I think it's my  
17 legal duty to tell her I think that the evidence is  
18 sufficient to convict.

19 I did that. It made her mad, and when I told her that  
20 while I think factually they have enough to convict you,  
21 there are these legal issues that I believe are sufficient  
22 to, to get a -- the case dismissed, she became even madder  
23 about me trying to get her off on a technicality.

24 MS. MOODY: I beg the court's indulgence.

25 (COUNSEL CONFERS WITH APPLICANT.)

T. LUPTON - DIRECT EXAMINATION BY MS. MOODY

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1 BY MS. MOODY:

2 Q. Okay, Mr. Lupton.

3 A. Yes.

4 Q. Do you recall getting an email from David Fernandez  
5 wherein he stated he needed a conviction in the case?

6 A. I, I, I know what she's talking about. There was a  
7 conversation between Dr. Faltas and myself in which I think  
8 I used the phrase needed a conviction. It was an inartful  
9 statement on my part and ---

10 Q. No, no, it's not you stating it. Do you recall  
11 receiving an email from Mr. Fernandez discussing the length  
12 of the case, how long the case had dragged on, and that  
13 they needed a conviction in the case?

14 A. I, I don't recall that email. If you've got a copy of  
15 it, I'll be happy to look at it. It might refresh my  
16 recollection, but I -- there were a lot of emails in this  
17 case.

18 MS. MOODY: Your Honor, may I approach the witness?

19 THE COURT: You may.

20 All right, now, as you approach the witness, I need to  
21 be sympathetic to my court reporter. It's been two hours,  
22 and she is a mask court reporter, and I think she may need  
23 a little break.

24 Am I right, Elizabeth?

25 COURT REPORTER: You are right.

1 THE COURT: Very good. Let's take -- Elizabeth, a  
2 ten-minute break?

3 COURT REPORTER: Perfect.

4 THE COURT: All right, let's take a ten-minute break,  
5 and then we'll resume.

6 MS. MOODY: Thank you, Your Honor.

7 (OFF THE RECORD.)

8 THE COURT: All right, I believe it's your witness, is  
9 it not, Ms. Moody?

10 MS. MOODY: Yes, ma'am.

11 THE COURT: You may proceed.

12 BY MS. MOODY:

13 Q. Mr. Lumpton, at the break we were talking about, ---

14 A. Right, and I looked at the email that you're referring  
15 to.

16 Q. Okay.

17 A. Hold it if you want, but it looks, like looks like  
18 multiple -- two copies of the same email.

19 Q. - But do you recall communicating with Mr. Fernandez  
20 regarding ---

21 A. Well, that was ---

22 Q. --- moving the case along?

23 A. Right. This email was sent in -- on February 6th. I  
24 started working on the case in January, on January 18th,  
25 and I had a number of discussions with him prior to that,

T. LUPTON - DIRECT EXAMINATION BY MS. MOODY

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1 including discussions with the defendant prior to that.

2 Q. Just bear with me just a little bit.

3 A. Certainly.

4 Q. For a second here. The email that I'm referring to,  
5 would you please read into the, the record the, the  
6 language in the red for the court?

7 THE COURT: Mr. Lupton, before you do that, let's  
8 identify who is sending the email and who is receiving the  
9 email.

10 BY MS. MOODY:

11 Q. Can you please state ---

12 THE COURT: And what the date is.

13 Q. Can you please state who sent that email?

14 WITNESS: And this was from the city prosecutor, Your  
15 Honor, David Fernandez.

16 A. It was sent on Wednesday, February 6, 2013, at 4:13  
17 p.m. It was sent to me, and I imagine I -- I don't know if  
18 I forwarded this. I don't know how ---

19 Q. Okay, just ---

20 A. You know, it was -- somehow apparently Dr. Faltas  
21 received it, and it states in relevant part:

22 Lastly, concerning the code violations, the city  
23 generally does not dismiss charges in exchange  
24 for a defendant agreeing to remedy the issue.  
25 This case has dragged on for some time. It is

1           relatively straightforward, and in light of the  
2           -- a defiant defendant, the city needs a  
3           conviction in order to ensure that the property  
4           stays clean and in compliance with law in the  
5           future, not just the present.

6           And then it goes on. It's talking about being open to  
7           work with me resolving stuff, and then certainly at that  
8           point, his position was that he wanted -- that he felt that  
9           a conviction was required. That doesn't mean that prior to  
10          that we didn't have a tentative agreement or after that.

11         Q.    Well, that's not what I'm getting at. I'm just asking  
12          did ---

13         A.    At that point ---

14         Q.    --- you talk to him?

15         A.    Yeah.

16         Q.    Okay.

17         A.    At that point, he was saying he wanted a conviction.

18         Q.    Okay.

19         A.    No question.

20         Q.    All right, and at the -- you earlier discussed that  
21          you talked with Dr. Faltas about what your -- what -- the  
22          probability of the case being determined in her favor  
23          versus her being convicted, correct?

24         A.    Right, right.

25         Q.    Okay.

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1 A. Yes, as far as my views on what the evidence showed.

2 MS. MOODY: Beg the court's indulgence.

3 (A PAUSE.)

4 MS. MOODY: Your Honor, may I approach the witness?

5 THE COURT: Yes, please.

6 BY MS. MOODY:

7 Q. Mr. Lumpton, I'm going to hand you a document, an  
8 email. Could you please identify who sent that email?

9 A. All right. Bear with me. My eyes aren't as good as  
10 they used to be.

11 (A PAUSE.)

12 Q. Can you, can you tell us who wrote that email?

13 A. If, if you could please give me, give me a minute?

14 Q. I'm going to give you a second to read it, but I just  
15 need you to tell me. Who is it from?

16 A. It's from me.

17 Q. To whom?

18 A. To Dr. Faltas and Mr. Briggs. Multiple email  
19 addresses to Dr. Faltas.

20 Q. Do you -- can you tell us the date on that?

21 A. It's February 14th of 2013.

22 Q. Thank you.

23 (A PAUSE.)

24 A. All right.

25 Q. Okay.

1 A. This is part of an email chain, but not the whole  
2 chain, but it -- in it, I tell her that I've asked her to  
3 stop copying other people on the email, emails, but since  
4 she's continuing, I'll explain it to all, which is her and  
5 Mr. Briggs. And this was concerning the charges, primarily  
6 the Property Management Act.

7 Q. Yes.

8 A. And my recollection was that he was aware of things,  
9 and this email shows that he was being included on the  
10 email chains regarding the case, and I explained that -- I  
11 say:

12 Your interpretation of Mr. Fernandez's response  
13 is incorrect to the point of being untruthful.  
14 His reply did not indicate the city has some  
15 independent need to convict you of anything.  
16 Rather, he believes that the only way you will  
17 comply with the law now and in future is if you  
18 are convicted.

19 And then I go on to say:

20 He even went on to hint that if you would just  
21 clean the place up, as I told you that you need  
22 to do, he would probably be willing to drop the  
23 charges.

24 Again, as I said before, my recollection at one point  
25 during the whole proceedings of the case during the time I

1 represented her, I had a -- an agreement that if he would  
2 -- if she would clean up, that upon her having it cleaned,  
3 they would dismiss, and that supports that, and I said:

4 I have told you that you are in violation of the  
5 law. I believe you have a legitimate factual  
6 and/or legal defenses on the other four pending  
7 charges, but on the code violation you are  
8 clearly guilty. Of course this doesn't mean I  
9 wouldn't try and get you off on a technicality at  
10 trial, but you are guilty and should clean the  
11 lot.

12 And then I understand that I said technicality in  
13 there, but that was something that she had used, and I'm  
14 sort of playing off of her phrasing.

15 Q. So, in February you all had entertained -- that was  
16 when you entertained the offer from the city?

17 A. I don't recall when I had gotten him to agree to that,  
18 but it, it, it could have been somewhere in the middle of  
19 February. It could have been to closer to trial. As, as  
20 I'm sure you're aware, being an attorney, the -- frequently  
21 case parties will be more willing to come to, to an  
22 agreement the closer they get to trial. Cases are  
23 frequently worked out very shortly before trial when, you  
24 know, attorneys decide they don't want to try the case.  
25 And so it could very well be that his willingness got

1 stronger as the case got closer to actual trial.

2 Q. So, when you were relieved in April, that was the day  
3 before the trial?

4 A. Right.

5 Q. Did you discuss with her again taking an offer or  
6 taking that offer again?

7 A. At that point, that wasn't even an issue. She was so  
8 clearly unwilling to, to try and clean up the, the  
9 property, that that wasn't even an issue at that point.

10 Q. And so the day before you got relieved, you, you were  
11 ready to go to trial. If you had to go and you did get ---

12 A. Yes.

13 Q. --- relieved, you were ready to go to trial ---

14 A. Yes.

15 Q. --- the next day? And you -- who were your witnesses?  
16 Dr. Faltas or were there any other witnesses?

17 A. I would have, I would have probably called Dr. Faltas.  
18 I would have discussed that with her, as I did at each  
19 trial. I would discuss whether or not she wanted to  
20 testify and the pros and cons of testifying, but the state  
21 -- or the city in this case has the burden of proof, and I  
22 had no witnesses other than her that I intended to call.

23 MS. MOODY: I beg the court's indulgence.

24 (COUNSEL CONFERS WITH APPLICANT.)

25 MS. MOODY: No further questions for this witness.

T. LUPTON - CROSS-EXAMINATION BY MS. KINARD

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1 THE COURT: Your witness, Ms. Kinard.

2 MS. KINARD: Thank you, Your Honor. Very briefly.

3 Your Honor, if I may beg the court's indulgence?

4 (A PAUSE.)

5 MS. KINARD: If I may approach the witness, Your  
6 Honor?

7 THE COURT: Yes. Please.

8 CROSS-EXAMINATION BY MS. KINARD:

9 Q. Mr. Lupton.

10 THE COURT: You never have to worry about asking that.  
11 I know some judges are quite formal. I am not. All right,  
12 you may approach.

13 BY MS. KINARD:

14 Q. I would just ask you to read that last line of the  
15 paragraph since that was left out of your testimony  
16 earlier, and again this is the email about requiring a  
17 conviction.

18 A. I, I, I started it, but the entirety of the sentence  
19 is:

20 I am certainly open to working with you and your  
21 client on resolving this charge outside of a  
22 trial, but that appears unlikely since this  
23 matter cannot be resolved based solely on the  
24 defendant's promises or assurances.

25 And again, I mean, he -- I don't think that he trusted

1 that she was going to do something just because she said  
2 she was going to do it, but we had conversations. And at  
3 one point if she -- my recollection is that if she had  
4 cleaned it up, then, you know, the, the -- having -- you  
5 know, if she did it ahead of time, then he was willing to  
6 dismiss, but that he wasn't willing to do anything based on  
7 a promise that she would do something down the road.  
8 Basically he wanted her to do before he acted.

9 DR. FALTAS: That doesn't say that.

10 THE COURT: Wait a minute.

11 DR. FALTAS: It says that ---

12 THE COURT: Wait a minute. Now, we're going to have  
13 order in this courtroom.

14 DR. FALTAS: Ma'am.

15 THE COURT: We're going to have ---

16 DR. FALTAS: Okay.

17 THE COURT: --- order, and we're going to proceed in a  
18 fair and orderly way, and no one is going to be  
19 interrupted, and no one's going to have any outbursts.  
20 We're going to proceed in an orderly way.

21 You may proceed, Mr. Lupton.

22 BY MS. KINARD:

23 A. That's basically it. I mean, he wanted her to be ---

24 THE COURT: I think I understand the gist of his  
25 testimony.

T. LUPTON - CROSS-EXAMINATION BY MS. KINARD

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1 Q. Thank you. Did that comport with your understanding  
2 of her feelings about the matter?

3 A. That she was absolutely unwilling to, to do anything,  
4 remedy? Yes. She made it very clear to me that she did  
5 not feel that she was in the wrong. That she felt that it  
6 was -- that the property looked pretty, and that there was  
7 absolutely nothing wrong with how she kept her property.

8 And I understand that one -- the old saying, one  
9 person's is trash is another person's treasure. We all  
10 feel our stuff looks great even when other people don't,  
11 but my objective belief that I expressed to her was that I  
12 felt that a reasonable jury was going to find that it  
13 violated the statute. There were piles of stuff laying  
14 around, buckets, and some of the lids came off and things  
15 like that.

16 THE COURT: I understand.

17 Q. Now at this time, this matter was scheduled to be  
18 heard April 11, 2013, and then she was sentenced on April  
19 25, 2013. Is that correct to the best of your memory?

20 A. Yes.

21 Q. At some point before that, did you ask to be relieved  
22 of representation?

23 A. I know that there was a hearing; I do not recall  
24 exactly how it came up. I can't recall if it was something  
25 she requested or if -- and unfortunately she is very

1 harassing and abusive, and I can't recall if it was  
2 something that I had just had all I could take or if it was  
3 something where she wanted it or a combination of the two,  
4 but my recollection is that we did have a hearing, and  
5 Judge Barber did put in place an order sort of restricting  
6 how she could contact me and, and I'm sure that order is in  
7 the record. So, my recollection is ---

8 THE COURT: I believe it is in the record. I think  
9 we've referred to these various transcripts and other  
10 submissions. Ms. Moody has done a good job of walking me  
11 through them, as has Ms. Kinard. So, I think I've read  
12 what you're talking about in some of these submissions.

13 BY MS. KINARD:

14 A. And it was -- the three months was a very intensive  
15 period. I spent hours every single day seven days a week  
16 dealing with this case. So, sometimes the timeline gets a  
17 little confusing. I don't remember exactly what happened  
18 on exactly which day because it was a very compressed time  
19 period with a lot of activity, but I do recall we had a  
20 hearing.

21 Q. Regarding the substitution in the specific matter, who  
22 instituted or instigated that change?

23 A. Dr. Faltas and Mr. Briggs made that agreement between  
24 themselves, and then I was informed of that. So, my  
25 understanding was that she approached him and asked him to

T. LUPTON - CROSS-EXAMINATION / REDIRECT EXAMINATION 64

1 represent her because my understanding is that she told  
2 him, and this is just -- this is hearsay from what they  
3 told me, but that she told him that I wasn't willing to  
4 represent her on that, which of course wasn't true, but I  
5 think what it amounted to is that I wasn't willing to do  
6 what she wanted me to do. And so she in her mind felt that  
7 that meant I wasn't willing to represent her.

8 MS. KINARD: I have no further questions, but I would  
9 ask that you tell the court anything else you feel the need  
10 to, to let Her Honor know for -- now based on your  
11 representation. Excuse me, and ask -- answer any questions  
12 Ms. Moody may have after that.

13 WITNESS: Your Honor, I'm, I'm happy to answer any  
14 questions.

15 THE COURT: I, I don't have any further questions.  
16 You have elucidated your position about the matter very  
17 clearly.

18 Ms. Moody, yes, ma'am.

19 MS. MOODY: Very briefly, Your Honor.

20 REDIRECT EXAMINATION BY MS. MOODY:

21 Q. Mr. Lupton, in April right before you were relieved  
22 of, of counsel on this case, you've indicated that it had  
23 become somewhat overbearing in terms of communicating with  
24 Dr. Faltas. Is that a correct summation of what you  
25 testified to?

1 A. Essentially. Of course, as I'm sure you're aware, she  
2 is overbearing from the start. I represented her on a  
3 matter prior to this and on this matter, and from the  
4 entirety of both representations, she is very demanding.  
5 Has -- very opinionated. It is -- her opinions are often  
6 very unfavorable to those who do not agree with what she  
7 believes to be correct. So, if you don't agree with her,  
8 she can say some very ugly things, and that went on from  
9 the very beginning in this case.

10 Q. So, right -- well, when you got relieved, did you all  
11 have an exchange where you emailed her or -- and you all  
12 went back and forth on your emails about the case?

13 A. We, we had a lot of emails about the case and other  
14 case -- the other cases. I mean, can you ---

15 Q. I just ---

16 A. --- be more specific, please?

17 Q. I'm, I'm going to hand you this email. Could you  
18 please identify who the email is from, the top portion?

19 A. The ---

20 Q. The rest of them ---

21 A. --- first page -- it's three pages of an email chain  
22 and the top of the -- what's been handed to me is the front  
23 page is from me. It was sent at 6:11 p.m. on Saturday,  
24 April 6, 2013. As I said, I, I worked hours every single  
25 day, seven days a week on this case.

T. LUPTON - REDIRECT EXAMINATION BY MS. MOODY

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1 Q. Okay, and just briefly, that email chain is the  
2 previous email that you've already read into the record.

3 THE COURT: Hold on one moment. Any objection to it,  
4 Ms. Kinard?

5 MS. KINARD: Is this being entered into evidence, or  
6 is he testifying?

7 MS. MOODY: I'm going to ask to move it into evidence  
8 per her wish.

9 MS. KINARD: As long as he authenticates that this is  
10 indeed something that he ---

11 THE COURT: I think he's authenticated it enough.

12 MS. KINARD: Yes, Your Honor, no objection.

13 THE COURT: Go ahead.

14 BY MS. MOODY:

15 Q. So, you've had -- you're reading it now?

16 A. I am reading it now, but, I mean, it -- I believe that  
17 this is -- and I don't think it's been doctored. Have no  
18 reason to believe that. So, I believe it is correct.

19 THE COURT: It's going to be in evidence, so I'll be  
20 able to take a look at it.

21 BY MS. MOODY:

22 Q. So, this email kind of basically sums up the, the  
23 contention that you spoke of?

24 A. It is directed, it's sent specifically and solely to  
25 her, despite the fact that it is responding to things that

1 she keeps -- and to, to sort of set the stage of this, from  
2 the very beginning I explained to her, or pretty early on I  
3 explained to her that she needed to address issues and  
4 questions directly to me and not to copy other people  
5 outside the representation. I explained attorney-client  
6 privilege, as well as -- and there are other reasons not to  
7 do that.

8 And as you can see from the chain, she kept copying  
9 other people repeatedly on these emails. She would copy  
10 and forward other people. Even when I would limit it to  
11 her in previous parts of the chain, she would still  
12 continue sending it on to other people in her replies and  
13 kept pressing for, you know, specifically what my position  
14 was, my, my beliefs and opinions. And at the end of that  
15 chain, I said and since, since you insist on a clear  
16 answer, here it is. And I told her what I believed, based  
17 on her insistence on that.

18 Q. So, in -- when you're talking about the emails going  
19 back and forth, the offer if she just cleaned up the  
20 property, that is an offer that you communicated to her?

21 A. My recollection is that I communicated that to her  
22 talking face to face, but it, it may have been alluded to.  
23 In fact, that one offer or that one email that we ---

24 Q. That's that.

25 A. --- addressed earlier, we talked about it and it may

1 be this is ---

2 Q. That's on the same chain.

3 A. It, it very well could be. It's three pages of fairly  
4 small type.

5 Q. That's the same chain.

6 A. All right. Then at some point in there, the -- yes, I  
7 did discuss that she needed to do that.

8 Q. Okay, and on April 6th, this email, was this the --  
9 part of an argument that you had with her?

10 A. Well, I mean, I haven't read the whole thing, but I do  
11 see and hear where she's talking about, you know, talking  
12 about my malpractice, basically saying things about me.

13 Q. And what was your response to her?

14 A. Well, she wanted -- and my recollection of this is  
15 that there was a lot going into reaching this point, but  
16 basically she wanted to know my feelings about her, and I  
17 kept trying to avoid that, but I eventually -- and this is  
18 April 6th. I eventually told her:

19           Since you insist on a clear answer, here it is.

20           You are a paranoid, delusional narcissist.

21           And I think that that's based on her belief that, that  
22 everybody's out to get her, which would be paranoid  
23 delusional. That everybody's out to get her, and that  
24 there's all these conspiracies being created between  
25 basically everybody out there to get her. And narcissist

1 is based on her belief that everything she believes is  
2 absolutely correct and that she knows everything.

3 Q. So, this email from April 6th, you're, you're  
4 explaining to her or you're -- what -- what's going on  
5 there because it's pretty strong language. Is this what  
6 she asked you to give her?

7 A. Yes, and she, she kept insisting, you know, you know,  
8 why do you, you know, why do you feel this way. And I at  
9 some point -- and this is 6:00 on a Fri -- a Saturday night  
10 and I gave it to her blunt. It perhaps was less than --  
11 perhaps it was not the kindest way, but she was wanting  
12 blunt and I gave her blunt.

13 Q. But did the offer change as to what the city -- this  
14 had -- y'all were going to trial at this point?

15 A. At that point, there was -- it was clearly going to  
16 trial. She was absolutely adamant about refusing -- well,  
17 she was adamantly refusing from the beginning to clean up  
18 the property.

19 Q. Okay. So, on Saturday you were still representing  
20 her, and on Monday you were going to go to trial?

21 A. It would have been ---

22 Q. Not Monday but ---

23 A. --- not Monday but it would have been a later day that  
24 week. Saturday would have been -- I think Saturday was the  
25 6th. So, it would have been Thursday maybe.

1 THE COURT: Okay, Ms. Moody, if that's going to be  
2 offered, it apparently is going to be coming in without  
3 objection. So, give it to my court reporter and have her  
4 mark it.

5 MS. MOODY: I have no further questions, Your Honor.

6 THE COURT: All right.

7 (EMAIL CHAIN MARKED INTO EVIDENCE AS APPLICANT'S  
8 EXHIBIT NUMBER 2.)

9 COURT REPORTER: Applicant's 2.

10 THE COURT: Yes, and hand it here to me.

11 MS. KINARD: I'm sorry, what was Applicant's 1?

12 THE COURT: 1 was that bucket, and I don't know where  
13 in the world it is. It's around here somewhere.

14 MS. KINARD: Thank you.

15 THE COURT: Or maybe that was a court's exhibit. I  
16 can't remember.

17 COURT REPORTER: That was a bucket.

18 THE COURT: Yeah. All right.

19 All right, you may come down, Mr. Lupton.

20 WITNESS: Thank you, Your Honor.

21 THE COURT: All right, Ms. Moody.

22 DR. FALTAS: Your Honor, may -- is ---

23 THE COURT: Wait.

24 Ms. Moody.

25 MS. MOODY: Yes, Your Honor.

1 THE COURT: You may come down, Mr. Lupton.

2 (THE WITNESS EXITS THE STAND.)

3 WITNESS: I, I, I apologize. She was starting to  
4 talk. I was making sure that I wasn't ---

5 THE COURT: At 5:00, I'm going to have to close this  
6 hearing. Now, I've heard it for a lengthy period of time  
7 before, and I've heard it for almost three hours today, and  
8 so I want to know where we are.

9 MS. MOODY: Your Honor, her issue is she would like to  
10 point out to the court in the transcript information  
11 regarding Mr. Briggs's testimony. I don't think it's  
12 necessary to have her brought up to the stand to testify.  
13 She wants to rebut something that he said, but I think that  
14 the court can read the transcript, and the transcript goes  
15 into the issue that she wants to bring to the court.

16 THE COURT: So, what's the page reference for me?

17 DR. FALTAS: Are, are you asking me? Am I allowed to  
18 speak? I'm asking am I ---

19 THE COURT: I'm asking Ms. Moody. She can give, give,  
20 give me whatever you all are talking about that I need to  
21 look at.

22 (COUNSEL CONFERS WITH APPLICANT.)

23 MS. MOODY: Your Honor, I apologize. It totally ---

24 DR. FALTAS: --- there were several others ---

25 MS. MOODY: It, it ---

1 THE COURT: Wait. Can't have two people talking.

2 MS. MOODY: It, it slipped my mind. There was  
3 testimony earlier that there were no subpoenas sent out. I  
4 believe the transcript talks about that on page 31.

5 THE COURT: Yeah, I'm very familiar with that. That  
6 came up right early in the trial. Mr. Briggs takes the  
7 position that he had put it on Ms. -- Dr. Faltas to issue  
8 these subpoenas. Dr. Faltas was trying to see if she could  
9 get a hold of the sheriff's department to see if they --  
10 she had done the right thing about getting them to the  
11 sheriff's department, and she was trying to see whether the  
12 sheriff's department had actually served these subpoenas,  
13 and I am very well aware of that.

14 And her position was I've done what I can do. I have  
15 put these subpoenas in the hands of the right people to get  
16 the witnesses I want here, but my attorneys did not pursue  
17 that for me as they should have, and I ---

18 MS. MOODY: And that goes to my issue of the  
19 continuance. I believe earlier the testimony was he did  
20 request for a continuance, but his reason ---

21 THE COURT: He requested a continuance because he had  
22 just gotten into the case, and he had had a very  
23 frustrating morning of having his car break down, his  
24 computers not work, and so forth and so on. He explained  
25 all that to the court, and then he said at the end of it if

1 I had another week, I could take half the time to try twice  
2 the better case or words to that effect. So, I remember  
3 all of that in the transcript. Very well aware of that,  
4 and I think that issue is preserved on Dr. Faltas's part  
5 with respect to what she contends is the incompetence of  
6 her attorneys in not having witnesses there to back up her  
7 contention, particularly the contention that DHEC standards  
8 preempt the standards in the municipal code with respect to  
9 what constitutes unsanitary conditions, as well as what the  
10 definition of rubbish and so forth is. And I think that  
11 position is very well preserved in terms of what you all  
12 are arguing.

13 But her argument and her contention is that her  
14 attorneys did not preserve that in front of the judge when  
15 the case was tried, nor tee'd -- tee it up in a way that  
16 gave Judge Lee the chance to use it as a predicate for  
17 granting the appeal. So, I think you are covered very ---

18 DR. FALTAS: There are three ---

19 THE COURT: --- completely on that issue.

20 DR. FALTAS: There are three other points.

21 (COUNSEL CONFERS WITH APPLICANT.)

22 THE COURT: Ms. Moody.

23 MS. MOODY: Your Honor, she's talking about being able  
24 to testify, I believe giving rebuttal testimony. She held  
25 -- my position is that there is no need for her to testify

1 because I think that I have preserved the record with the  
2 amended PCR application, as well as given her an  
3 opportunity -- and I asked her repeatedly at the end of the  
4 hearing the last time, or I asked her had she -- was there  
5 anything else to tell the court.

6 THE COURT: Ms. Moody, I have no doubt of what  
7 happened in the other hearing, and I have read that  
8 transcript any number of times. I regard the testimony as  
9 at an end now, and I am prepared to make a ruling on this  
10 matter. So, if you all will take your seats.

11 MS. MOODY: Thank you, ma'am.

12 RULING OF THE COURT:

13 THE COURT: In this post-conviction relief matter, the  
14 applicant raises a claim of ineffectiveness based on five  
15 issues, and I'm looking now at the motion, at the  
16 applicant's More Definite Statement of Grounds. I do not  
17 find any merit for reasons I will explain in grounds B, C,  
18 D, and E. But I am going to grant the petition for  
19 post-conviction relief based on ground A, and that is the  
20 ineffectiveness of counsel in not putting forth the  
21 argument of preemption with respect to the state law with  
22 regard to the definition of rubbish and the definition of  
23 sanitary conditions.

24 Judge Lee frames the issue this way. It's the very  
25 first issue she discusses on page 3 of her order of August

1 the 19th, 2014. She discusses the issue of -- that was a  
2 direct appeal issue, which is whether the city's definition  
3 of rubbish is preempted by state law. That's a very valid,  
4 and I think the only valid, grounds in the recited grounds,  
5 and Judge Lee says this:

6 The only mention of preemption during any  
7 proceedings was when appellant briefly stated the  
8 issue without any specificity of whether the  
9 state law preempted the field or not in her  
10 motion for a new trial. It was not presented  
11 directly as the case was being tried, only on  
12 post-trial motion. This argument was not  
13 specific -- not made specifically for the  
14 definition of rubbish, and it seemed it was made  
15 in relation to whether state law preempts the  
16 city's ability to criminalize the conduct.

17 And Judge Lee concludes:

18 Appellant did not raise the issue of preemption  
19 of the definition prior to or during the trial,  
20 and there was no specific objection regarding  
21 preemption contemporaneous to any discussions at  
22 the trial. Therefore, this argument was not  
23 sufficiently preserved for appeal.

24 Now, that is in part a failing of both counsel, but it  
25 is clear that the strategy of her original counsel, Mr.

1 Lupton, was to pursue an attack on the technical  
2 sufficiency of the city's ordinance, and he focused on the  
3 definition of the crime for which she was charged.

4 Although it is not clear in the material I have whether his  
5 focus was directly on what Judge Lee talked about, what I  
6 am talking about, and what you, Ms. Moody, clarified in the  
7 material you filed, which is the preemption argument, and  
8 that is I don't know how the court would -- how the -- a  
9 higher court look at that. But it is a very valid argument  
10 and might have been and I think was (A) the most powerful  
11 argument to be made but (B) the only really valid one to be  
12 made.

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

23 C was the argument that the city's actions constitute  
24 taking. I suppose that would have to be an inverse taking,  
25 and our jurisprudence has really -- evolving even now about

1 what constitutes a taking and what constitutes an inverse  
2 condemnation or an inverse taking there.

3 The court is rehearing as we speak a case that  
4 involved a taking of a structure up your way, Ms. Moody, in  
5 connection with a criminal case where the property was  
6 destroyed. And the old law, as many of us grew up knowing  
7 it, would say that that is not a taking. It's an exercise  
8 of police power, but now the law is evolving, and our court  
9 is going to re-examine that. But at the present time, I  
10 would not be empowered, nor do I think a city judge would  
11 be empowered, to invalidate this on that basis, on the  
12 basis of a taking.

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

19 And prejudice based on the appellant's right to make  
20 the final argument to the jury, that is only a right  
21 afforded to the appellant, to the petitioner here if  
22 petitioner had put up no evidence. And we've just had a  
23 big discussion within our court about whether to change  
24 that, but the court has decided not to do that. So, the  
25 present construct of the law in South Carolina is that if

1 you put up any evidence, you don't have the final argument  
2 to the jury. The state has the final argument to the jury.  
3 So, that would not be appropriate.

4 I, I mention my views, Ms. Kinard, on these matters on  
5 which I'm not granting post-conviction relief so that they  
6 are available for further review if you decide to move with  
7 an appeal on the ruling I do make about post-conviction  
8 relief and Ms. Moody chooses to use some of these others as  
9 valid, additional, sustaining grounds, even though I don't  
10 adopt your arguments.

11 So, in short, Ms. Moody, as you know, I am not  
12 strongly staffed as a senior judge, and so I will depend  
13 upon you to prepare me an order granting post-conviction  
14 relief on the grounds of the preemption issue and the fact  
15 that it was not raised by counsel.

16 And let me say when I make that ruling that the  
17 granting of post-conviction relief is in no way a  
18 reflection on either of the counsel in this case. Both are  
19 very decent members of the bar and good people.

20 And I say to you specifically, Mr. Briggs, you are a  
21 man of decency and generosity and much kindness. Sometimes  
22 appreciated by those to whom you extend it and sometimes  
23 not, but that's the way of the world. When we extend our  
24 kindness, we don't do it with any idea that rewards will  
25 come back to us, but you're a good person, and my ruling in

1 this matter is a matter of the law as I see it and not a  
2 reflection on your considerable abilities.

3 And with that, this matter is adjourned.

4 --- 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 THIS PORTION OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 14TH DAY OF JUNE, 2017.

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

NOVEMBER 20TH, 2018



From: LuptonLawFirm <LuptonLawFirm@sc.rr.com>

Sent: Saturday, April 6, 2013 6:11 PM

To: 'Marie Faltas'

Subject: RE: pending trespass. Continuing reply.

1) Since you insist on a clear answer, here it is: You are a paranoid-delusional narcissist; you hear and believe what you want regardless of what is said or what the facts are. Additionally despite your narcissistic belief that you understand law, you don't. You are well capable of reading a case and grasping which side won, but you completely miss the implications of the case. I could go on, but I think that I have made myself clear. In short, you are wrong, and what you keep asking me to do, is as I have said every time: not proper.

Of course, you will now say you cannot have a lawyer who believes you are one step away from needing a criminal responsibility exam. However, that choice is out of your hands. You have harassed so many people, abused the legal process so many times, that you are prohibited by court order from proceeding pro se. I am your lawyer unless and until you hire one.

The reality is that the Judge set the first trespass in time as first trial because he expected you to be convicted & wanted there to be no issues with the City mentioning the first trespass during the second trial. The second trespass was never dismissed. Had the Judge dismissed it, the Public Index would have said dismissed. And had the Judge dismissed it, it would have stayed dismissed.

2) Now, I will continue to defend you as I have. When you send me relevant items or questions, I will respond. I will not respond to every abusive, insulting e-mail, or every irrelevant thing you send. Additionally, you have indicated that you think you can get around the court's order denying you yet another lawyer by violating the no phone call order & then getting a new lawyer upon my giving the information to the court for contempt actions. However, I will not take this issue up with Judge Barber until after the last City trial the end of this month. I have kept track of your calls. Now, I will not report you to the Judge if you cease violating his order. However, if you continue calling, I will have no choice but report your repeated and intentional violations. This is not a threat or blackmail. Rather it is fair warning. You cannot manipulate the order, nor can you continue to violate it.

3) All continuances are in the Judge's discretion, not mine. If you are actually admitted into the hospital, or have a doctor's order saying you are not able to be in court on the date of one or your trials, then I would hope that the Judge would grant the continuance, but I cannot guarantee anything. If he thinks you went into the hospital for the propose of avoiding trial, then he may order the trial to go forward without you, and/or issue a bench warrant for your failure to appear. Therefore, I strongly recommend that if you do not appear, you have a written order from a doctor saying you are medically unfit to come to court (I believe the medical term would be that you were ordered to be on bed rest).

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From: Marie Faltas [[mailto:marie\\_faltas@hotmail.com](mailto:marie_faltas@hotmail.com)]

Sent: Friday, April 05, 2013 12:51 PM

To: Ted Lupton; Marie Assa'ad-Faltas; Orin Gail Briggs; Attorney Tristan Michael Shaffer

Subject: RE: pending trespass. Continuing reply.

Who is that "someone"?

That is why I specifically e-mailed you *Ashe v. Swenton* and *Smith v. Massachusetts*.

I simply cannot accept, and I believe it is "legal malpractice" for Mr. Lupton to accept, something that some unknown "someone" told him that "it appears that someone" else saw and got confused. As I explained in the first part of my reply, it is very unlikely that mystery "someone" "got confused" because they clearly entered "not guilty jury trial" on the first trespass and "not guilty bench trial" on the second trespass.

Further, I immediately asked Mr. Lupton to get the formal disposition letters, to which he unjustifiably procrastinated. How can it possibly be in my interest to have a lawyer who converts a "not guilty" into a pending, all in violation of Double Jeopardy, as interpreted by the U.S. Supreme Court in the above-cited cases?

I never ever consented to have the "ordinance summons" case tried before the older pending charges. Mr. Lupton specifically received

an e-mail from Fernandez that says "the City needs a conviction" and since then Mr. Lupton point blank e-mailed me that he thinks I am guilty.

I do not want a lawyer who thinks I am guilty. Further, in Mr. Lupton's continued arrogant ignorance of the law, he overlooked the clear law that City Ordinances carry jail time only if there is not definite fine. In this case, there is a definite fine and I paid it.

And now that Mr. Lupton put back on the docket a case on which the judge had already directed a "not guilty," how does he plan to defend me?

To be clear:

1. Anything post-dating the 2 December 2009 false arrest on the two false harassment counts from which I, thank God, completely exonerated myself *pro se* is fruit of the poison tree and a nullity at law. It is not just that the charges were resolved in my favor; it is that there was never probable cause to begin with as evidenced by Angela Ladson's point-blank admission *in camera* in my General Sessions trial: "Q. [by me] How did they know [sic] I was harassing them? A. [by Ladson] Dr. Faltas, I do not know that." There is no trespass charge, no notice, no contempt, no bond violation, no anything to be had from any order or bond condition or appearance or anything stemming from the poison tree of the 2 December 2009 arrest.

2. The City's "assault" ordinance is void for vagueness and for overbreadth and also pre-empted by state law which completely occupied the field of assault and battery definitions in three degrees. My false accuser can, if she wants to, seek a new courteous summons under state law; but I do NOT consent, and I FORBID MR. LUPTON FROM CONSENTING ON MY BEHALF, to converting the summons to state law.

3. The false "disorderly" should not go to the jury. It is a matter of *immunity* for words covered by the First Amendment, not an issue of fact to be resolved by a jury.

I need Mr. Lupton to explain to me *in clear detail* what his legal objection to what I just wrote is and why he would not make motions to dismiss on that basis.

I shall, God willing, soon e-mail U.S. Magistrate Judge McCrorey's second report and recommendation in Marie Assa'ad-Faltas v. City of Columbia, U.S. District Court (D.S.C.) No 2010-cv-3014-TLW to the effect that only ordinances without definite fines carry jail time.

Most significantly, with my severe knee pain, I cannot sit through a trial. And I do NOT want or consent to anything being tried in my absence.

Thanks for your attention and God bless./Marie

---

From: [ted@luptonlawfirm.com](mailto:ted@luptonlawfirm.com)  
 To: [marie\\_faltas@hotmail.com](mailto:marie_faltas@hotmail.com)  
 Subject: pending trespass  
 Date: Thu, 4 Apr 2013 21:45:56 -0400

I have confirmed with the City Court that the "not guilty – bench trial" was a data entry error. It appears that someone saw the not guilty on the 1<sup>st</sup> trespass & got confused & incorrectly entered a not guilty on the wrong case. In any event, the 2<sup>nd</sup> trespass was never closed on the court's docket, so it is still pending.

Ted

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Or visit us on the web at: [LuptonLawFirm.com](http://LuptonLawFirm.com)

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From: Marie Faltas <[marie\\_faltas@hotmail.com](mailto:marie_faltas@hotmail.com)>

Sent: Thursday, February 14, 2013 12:20 PM

To: Attorney Theodore N. Lupton; Orin Gail Briggs; Marie Assa'ad-Faltas

Subject: RE: Mr. Briggs is my lawyer too, in a federal case. Your claim that I am guilty of code violation confirms you should not be my lawyer.

My interpretation of what Fernandez meant is my right. I have seen too much deceit from that man, including his suggestion that I said his "wife will be raped for generations to come" because I had told the *General Sessions jury* the Biblical story of King David.

I am too polite to tell Mr. Lupton what he and David Fernandez should go and do together since Lupton defends Fernandez so much.

What matters is that you transmit this reciprocal discovery to Fernandez and give me proof that you did.

Expecting one's lawyer to zealously defend the innocent is not "abusing" or "harassing" that lawyer.

Thanks and God bless./Marie

---

From: [LuptonLawFirm@sc.rr.com](mailto:LuptonLawFirm@sc.rr.com)  
 To: [marie\\_faltas@hotmail.com](mailto:marie_faltas@hotmail.com); [ogb-atty@sc.rr.com](mailto:ogb-atty@sc.rr.com); [marieassaadfaltas@gmail.com](mailto:marieassaadfaltas@gmail.com)  
 Subject: RE: Documents for reciprocal discovery even though the City did not fully provide discovery  
 Date: Thu, 14 Feb 2013 12:13:08 -0500

I have asked before that you not copy others on your e-mails to me. Since you continue to do this, I will explain this to all. Your interpretation of Mr. Fernandez's response is incorrect to the point of being untruthful. His reply did not indicate the City has some independent need to convict you of anything. Rather he believes, that the only way you will comply with the law now and in the future is if you are convicted. He even went on to hint that if you would just clean the place up, as I told you that you need to do, he would probably be willing to drop the charge. I have told you that you are in violation of that law. I believe you have legitimate factual and/or legal defenses on the other 4 pending charges; but on the code violation you are clearly guilty. Of course, that doesn't mean I wouldn't try to get you off on a technicality at trial, but you are guilty and should clean the lot. Now please stop insulting people in e-mails that include both me and other people.

Ted  
 Lupton Law Firm  
 140 Gibson Road  
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 Office: 803) 358-7208  
 Fax: (803) 358-7233  
 e-mail: [LuptonLawFirm@sc.rr.com](mailto:LuptonLawFirm@sc.rr.com)

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---

From: Marie Faltas [[mailto:marie\\_faltas@hotmail.com](mailto:marie_faltas@hotmail.com)]  
 Sent: Thursday, February 14, 2013 11:46 AM  
 To: Attorney Theodore N. Lupton; Orin Gail Briggs; Marie Assa'ad-Faltas  
 Subject: Documents for reciprocal discovery even though the City did not fully provide discovery  
 For Mr. Briggs' (and I hope he passes it on to my sister if the City and its co-conspirators do kill me) edification, here is what Fernandez answered to Mr. Lupton in response to my attempt to work things out with them: "The City needs a conviction." Fernandez told something like that to Clarke Newton and Bob Cooper told something like that to Herb Buhl.  
 But the moral of the attachments is that Larry Mason and Dinah Steele first called DHEC falsely claiming that I had "infectious waste" on my land. The report speaks for itself. Then, when that did not work, as their attempts to contact "INS" in 2009 had not worked, they called the reliably-corrupt City of Columbia. "The City needs a conviction" indeed. God willing, like the Biblical story of Haman and Mordechai, the conviction will be of those really guilty of perjury, drug-dealing, prostitution, and likely murder.  
 Please also note how Fernandez plays with words: "There is no roadside video" because I was not arrested "on the road" or at the "roadside." Besides, what matters most is Ashmore's internal video because the alleged "disorderly conduct" as evidenced from the time and signature on the ticket is claimed to have occurred inside Ashmore's car.  
 Thanks for your attention and God bless./Marie

From: Fernandez, David A [<mailto:dafernandez@columbiasc.net>]  
 Sent: Wednesday, February 06, 2013 4:13 PM  
 To: [luptonlawfirm@sc.rr.com](mailto:luptonlawfirm@sc.rr.com)  
 Subject: RE: State v. Faltas  
 Ted,

The charges brought by Ms. Steele and Mr. Mason were by courtesy summons, not arrest. While I would like to be helpful in resolving the matters concerning Ms. Faltas, I cannot speculate about charges that were not brought, or whether any alleged detention was lawful or unlawful.

As to your second request, there is no roadside video of Ms. Faltas' arrest by CPD from any of the officers present.

And lastly, concerning the code violation(s), the City generally does not dismiss charges in exchange for a defendant agreeing to remedy the issue. This case has dragged on for some time, is relatively straight-forward, and in light of a defiant defendant, the City needs a conviction in order to ensure that the property stays clean and in compliance with the law in the future, not just the present. I am certainly open to working with you and your client on resolving this charge outside of a trial, but that appears unlikely since this matter cannot be resolved based solely on the defendant's promises or assurances.

Please let me know if you require anything further. Thanks,

David  
 David A. Fernandez  
 Assistant City Attorney  
 Office of the City Attorney  
 P.O. Box 667  
 Columbia, SC 29202  
 Tel.: (803) 737-4242  
 Fax: (803) 737-4250  
[dafernandez@columbiasc.net](mailto:dafernandez@columbiasc.net)

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|                          |   |                                       |
|--------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS          |
|                          | ) | FIFTH JUDICIAL CIRCUIT                |
| COUNTY OF RICHLAND       | ) |                                       |
|                          | ) |                                       |
| Marie Assa'ad-Faltas,    | ) |                                       |
|                          | ) | C/A No: 2016-CP-40-01444              |
| Applicant,               | ) |                                       |
|                          | ) | Order Granting Post-Conviction Relief |
| vs.                      | ) |                                       |
|                          | ) |                                       |
| State of South Carolina, | ) |                                       |
|                          | ) |                                       |
| Respondent.              | ) |                                       |
|                          | ) |                                       |

2018 JUN 14 10:10 AM

#1  
807

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 24, 2014. Applicant sought to overturn her conviction for the violation of a City of Columbia ordinance regulating the storage of rubbish, debris, and trash on Applicant's rental property. A hearing was convened at the Richland County Courthouse on December 7, 2016 and June 14, 2017. Applicant, Maria Assa'ad-Faltas, was present and represented by Leah B. Moody, Esquire. Respondent, State of South Carolina, was represented by Jessica E. Kinard, Esquire. Applicant's previous counsel, Orin Briggs and Theodore Lupton, were present and testified at the hearing. This Post-Conviction Relief hearing only addressed Applicant's charge of violation of the City of Columbia rubbish, trash, and debris ordinance.

At the outset, this Court takes note of the Supreme Court of South Carolina decision regarding Applicant issued on June 21, 2017. In *City of Columbia, Respondent, v. Marie-Therese Assa'ad-Faltas, Appellant*, 420 SC 28, 800 S.E.2d 782 (2017), the Court describes in detail Applicant's persistent abuse of the judicial system by way of excessive filings, abusive behavior, and disruptive actions. In that case, the Supreme Court was reviewing Dr. Faltas' conviction for simple assault arising out of her refusal to allow her landlord to inspect, with City of Columbia officials, her residential rental property. Dr. Faltas' ultimate conviction of the rubbish and trash


ordinance is the subject of the present matter. In this case, Applicant repeatedly attempted to contact the presiding judge with contentious and invasive communications, all in violation of numerous Supreme Court Orders detailed in the above cited opinion.

This Court conducted a post-conviction relief hearing on this matter and attempted to focus in on the only issue of merit: whether Applicant's counsel was deficient for not addressing the issue of whether the local ordinance was preempted by state law and state Department of Health and Environmental Control (DHEC) regulations. This Court finds Counsel was deficient for not raising this issue at trial. A Motion to Dismiss based on this issue could have changed the outcome of the case and the failure to make said motion prejudiced Applicant. All other issues raised by Applicant are patently without merit.

#2 This Court has grave reservations about whether or not a dispute in Municipal Court regarding the validity of a city rubbish ordinance is a matter for post-conviction relief. Nevertheless, this Court has proceeded on the assumption that the Application for Post-Conviction Relief was proper based on Orders from the Supreme Court of South Carolina assigning this matter to Circuit Court for post-conviction relief, and the failure of the State to present arguments on this ground challenging the propriety of the proceeding. The State did move to dismiss on other grounds, and its motions were denied

On the merits, this Court finds Applicant is entitled to a new trial on the issue of Applicant's conviction for violation of the city's ordinance regarding rubbish.

AND IT IS SO ORDERED.

  
Jean H. Toal  
Chief Justice, Retired  
Acting Circuit Court Judge

June 14, 2018

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2016CP4001444

|                     |  |                         |  |
|---------------------|--|-------------------------|--|
| Marie Assaad Faltas |  | State Of South Carolina |  |
|---------------------|--|-------------------------|--|

|               |                                                                                                                                           |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| PLAINTIFF(S)  | DEFENDANT(S)                                                                                                                              |
| Submitted by: | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br><input type="checkbox"/> 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.  See Page 2 for additional information
- 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: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- 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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |

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.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date 6/14/2018

For Clerk of Court Office Use Only

This judgment was entered on \_\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on **June 14, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

Marie Assaad Faltas  
Leah B. Moody 235 E. Main St., Ste 115 PO Box 1015 Rock  
Hill, SC 29730

Lindsey Ann McCallister PO Box 11549 Columbia, SC  
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Jeanette W. McBride - Clerk of Court

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Marie Assa'ad Faltas )  
 Plaintiff, )  
 vs. )  
 )  
 STATE OF SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-01444

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

2018 JUN 25 PM 12: 28  
 FILED  
 AND COUNTY  
 C.C.P. & G.S.  
 W. McBRIDE

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                             |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|---------------------------------------------------------|--------------------------------------------------------------|------------------------------------------------------------|------------------------------------------|--------------------------------------------------------|--------------------------------------------------------|----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------|--|---------------------------------------|--|
| Plaintiff's Attorney:<br>Leah B. Moody, Bar No. _____<br>Address:<br>Post Office Box 1015<br>Rock Hill, SC 29730<br>Phone: _____ Fax: _____<br>E-mail: _____ Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Defendant's Attorney:<br>Johnny E. James, Bar No. _____<br>Address:<br>Post Office Box 11549<br>Columbia, SC 29211<br>Phone: _____ Fax: _____<br>E-mail: _____ Other: _____ |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)<br><input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)<br><input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                             |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                             |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| Nature of Motion: _____<br>Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                             |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <b>SECTION II: Motion/Order Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                             |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input checked="" type="checkbox"/> Written motion attached<br><input checked="" type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.<br><div style="text-align: right; margin-top: 10px;"> <br/>                     Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant                 </div> <div style="text-align: right; margin-top: 5px;">                     June 25, 2018<br/>                     Date submitted                 </div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                             |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                             |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> PAID - AMOUNT: \$ _____<br><input type="checkbox"/> EXEMPT: (check reason) <table style="width:100%; margin-left: 20px;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> <td><input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> <td><input checked="" type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status</td> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act</td> <td><input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Other: _____</td> </tr> </table> |                                                                                                                                                                             | <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support | <input type="checkbox"/> State Agency v. Indigent Party | <input type="checkbox"/> Domestic Abuse or Abuse and Neglect | <input checked="" type="checkbox"/> Post-Conviction Relief | <input type="checkbox"/> Indigent Status | <input type="checkbox"/> Motion for Stay in Bankruptcy | <input type="checkbox"/> Sexually Violent Predator Act | <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) | <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions |  | Name of Court Reporter: _____ |  | <input type="checkbox"/> Other: _____ |  |
| <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <input type="checkbox"/> State Agency v. Indigent Party                                                                                                                     |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> Domestic Abuse or Abuse and Neglect                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <input checked="" type="checkbox"/> Post-Conviction Relief                                                                                                                  |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> Indigent Status                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <input type="checkbox"/> Motion for Stay in Bankruptcy                                                                                                                      |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> Sexually Violent Predator Act                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)                                                                                                              |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                             |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| Name of Court Reporter: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                             |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                             |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <b>JUDGE'S SECTION</b><br><input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | JUDGE CODE _____<br>Date: _____                                                                                                                                             |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                             |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| Collected by: _____ Date Filed: _____<br><input type="checkbox"/> MOTION FEE COLLECTED: \$ _____<br><input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                             |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE FIFTH JUDICIAL CIRCUIT  
 COUNTY OF RICHLAND )  
 Marie Assa'ad-Faltas, ) Case No.: 2016-CP-40-01444  
 )  
 Applicant, )  
 )  
 v. ) **MOTION TO RECONSIDER ORDER**  
 ) **GRANTING POST-CONVICITON RELIEF**  
 State of South Carolina, )  
 )  
 Respondent. )

2018 JUN 25 PM 12: 28  
 FILED  
 AND COUNTY  
 JAMES H. McBRIDE  
 CLERK  
 S.C.

In response to the "Order Granting Post-Conviction Relief" filed June 14, 2018 ("the Order"), in the above matter, Respondent would respectfully move this Court reconsider its grant pursuant to Rules 59 and 60, SCRCP. The clocked order grants Applicant relief on one ground: that Counsel was deficient for not raising the issue of whether the City of Columbia rubbish ordinance was preempted by state law and Department of Health and Environmental Control ("DHEC") regulations. The order dispenses with all other issues raised as "patently without merit."

I.

The Order does not explain which State statute or DHEC regulation preempts the city ordinances which Applicant violated. Based on the totality of the record, it appears the "preemption" at issue is whether the DHEC definition of "rubbish" preempts the definition provided in municipal regulations. DHEC is empowered to promulgate and enforce reasonable rules and regulations for a variety of public health purposes. See, e.g., S.C. Code Ann. § 44-1-140. It is true that DHEC regulations provide a general purpose definition of rubbish: "Means solid wastes from residences and dwellings, commercial establishments, and institutions." S.C. Code Ann. Regs. R. 61-62.1 § I, 79. However, that same section provides that the definitions

apply only “when used in the Regulations and Standards” promulgated in the DHEC regulations, and as an augment to the South Carolina Pollution Control Act. Id.; see also S.C. Code Ann. § 48-1-10, et. seq. (the “Pollution Control Act”).

State law provides that municipalities and counties may adopt by reference nationally recognized codes and standards for property construction and maintenance. S.C. Code Ann. § 6-9-60. The City of Columbia municipal ordinances incorporate by reference the International Property Maintenance Code, and provides that:

Any other violation which is considered a public nuisance by any other violation of the International Property Maintenance Code or the municipal ordinances of the City of Columbia is hereby included in this section by general reference.

Columbia, S.C., Code § 8-32(b). The code defines rubbish as:

Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

Int’l Prop. Bldg. Code § 202 (2009). Garbage, above excluded, is defined as “[t]he animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.” Id. The code thereafter prohibits the accumulation of rubbish or garbage, and establishes that “[a]ll *exterior property* and *premises*, and the interior of every structure, shall be free from any accumulation of *rubbish* or garbage.” Int’l Prop. Bldg. Code § 308.1 (2009) (emphasis original).

The city adoption of the IPBC definition of rubbish is valid under statute and not preempted by the DHEC definition. “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature.” Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). The Supreme Court of South Carolina has set forth a two-step process to determine if a local ordinance is valid:

First, the Court must consider whether the municipality had the power to enact the ordinance. If the State has preempted a particular area of legislation, a municipality lacks power to regulate the field, and the ordinance is invalid. If, however, the municipality had the power to enact the ordinance, the Court must then determine whether the ordinance is consistent with the Constitution and the general law of the state.

Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008) (citations omitted). “To preempt an entire field, an act must make manifest a legislative intent that no other enactment may touch on the subject in any way.” Id. (quoting Bugsy’s v. City of Myrtle Beach, 340 S.C. 87, 94, 530 S.E.2d 890, 893 (2000). “[F]or there to be a conflict between a state statute and a municipal ordinance both must contain either express or implied conditions which are inconsistent or irreconcilable with each other . . . . If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand.” Id. (quoting Town of Hilton Head Island v. Fine Liquors, Ltd., 302 S.C. 550, 553, 397 S.E. 2d 662, 664 (1990)).

Neither the Order, nor Respondent’s arguments, show any intent by the legislature to empower DHEC to regulate the retention of rubbish, garbage, trash, or detris on private property to the exclusion of all municipalities. Nor can Respondent find any such intent. To the contrary, municipalities have the ability to adopt and enforce the model codes as explicitly permitted by § 6-9-90. That municipalities are afforded the ability to prosecute the nuisance accumulation of rubbish stands to reason: municipalities contract for the collection of rubbish, garbage, trash, and other detris, not the State government.

The Court cannot reasonably conclude that a motion to dismiss the citation on preemption grounds would have had any chance of prevailing, let alone that Applicant has met her burden of showing as much. Accordingly, the Order should be vacated, and Applicant’s request for relief by way of the “preemption” allegation should be denied.

**II.**

South Carolina law provides that in a post-conviction relief matter the “[t]he court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.” S.C. Code Ann. § 17-27-80; see also Rule 52(a), SCRPC (“In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58[.]”); Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). To the extent that this Court is unpersuaded by the arguments set forth in Section I, above, and would reaffirm its grant of relief, Respondent must respectfully request a more thorough explanation of its basis for granting relief.

**III.**

**WHEREFORE** the reasons above stated, Respondent requests the Court either:

1. Vacate its Order of June 14, 2018, granting relief, and based upon the record currently before the Court, deny the application for post-conviction relief for the reasons above stated; *or*
2. Vacate its Order of June 14, 2018, and refile an order that adequately addresses the legal reasoning for granting relief on the grounds previously relied upon.

*[Signature on following page]*

Respectfully submitted,

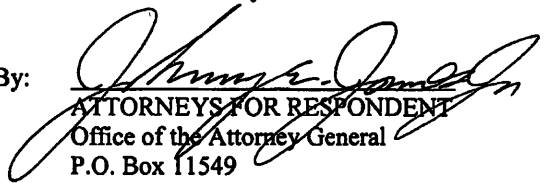
ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.  
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

*25 June* 2018



ALAN WILSON  
ATTORNEY GENERAL

June 25, 2018

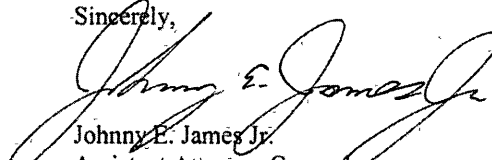
The Honorable Jeanette W. McBride  
Clerk of Court, Richland County  
Post Office Box 192  
Columbia, South Carolina 29202

**Re: Marie Assa'ad Faltas v. State of South Carolina**  
**2016-CP-40-01444**

Dear Ms. McBride:

Enclosed please find the original **Motion to Reconsider Order Granting Post-Conviction Relief** in the above-captioned case for filing in your office.

Sincerely,



Johnny E. James Jr.  
Assistant Attorney General

JEJ/can  
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


C/A No. 2016-CP-40-00144 4

**ORDER DENYING RESPONDENT'S  
MOTION TO ALTER OR AMEND  
THE JUDGMENT**

2018 JUN 29 AM 11:57  
RICHLAND COUNTY

After careful consideration of the Respondent's Motion and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby DENIES Applicant's Motion pursuant to Rule 59(e) SCRCF to Alter or Amend Judgment of this Court's Order entered on or about June 14 , 2018. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.



Jean H. Toal  
Chief Justice, Retired  
Acting Circuit Court Judge

June 29, 2018