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Oct 13 2021

S.C. SUPREME COURT BEFORE THE SUPREME COURT OF SOUTH CAROLINA

The State of South Carolina

Appellant

v.

Gregory Kirk Duncan

Respondent

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JAN 21 2011

S.C. SUPREME COURT

**HUMBLE AND RESPECTFUL CONTRIBUTION IN THE NATURE OF A LETTER TO THE COURT
IN THE HOPE OF ASSISTING ITS HONOR IN DECIDING A DIFFICULT CASE**

Having gratefully observed oral arguments before this Court, Marie Assa'ad-Faltas, MD, MPH, a South Carolina resident with legal talents and research, humbly submits suggested answers to questions she observed the Court conscientiously explore. She advises the Court that she gave her suggestions to the attorney for the State, who listened but declined to write to the Court. Dr. Assa'ad-Faltas then had a chance encounter with the Honorable Justice Beatty, who kindly assured her His Honor recalls her oral argument before SC's Court of Appeals and indicated a submission of this nature may be appropriate.

The threshold is the Honorable Justice Pleicones' concern about width of a statute (to be balanced against the Court's duty to give effect to the Legislature's intent to immunize a person who exercises the defense of habitat) joined to the Chief Justice's search for the standard of proof needed to enjoy that immunity.

The burden is suggested to be on the defendant to show by "clear and convincing evidence," not merely preponderance of the evidence, that he is entitled to the immunity afforded by the statute. It need be higher than mere preponderance to prevent wantoh taking of lives under pretext of defense of habitat.

"Clear and convincing" is how *Addington v. Texas*, 441 U.S. 418 (1979), balanced the individual's right to privacy and liberty against Society's interest in protecting the public from harmful activities by mentally-dangerous persons. It is proper and necessary in this case to simultaneously protect lives and "castles."

The Honorable Chief Justice and Justice Kittredge asked how to effect the statute's intent of providing immunity from prosecution, not merely affirmative defenses. The obstacles are statutory (prosecutors control the criminal docket) and case-law-made (criminal defendants may not appeal until sentenced). Both are unique to this State but soluble by case law analogous to federal "qualified immunity" law.

A criminal defendant who intends to invoke this immunity should be entitled to assert it at or before the preliminary hearing; *i.e.*, within ten days of the arrest or even during the bond hearing. **But a denial or grant of dismissal based on defense-of-habitat immunity must be immediately appealable as is denial of summary judgment based on a claim of qualified immunity in civil federal cases.** Judicial dismissal under that procedure would have occurred before jeopardy attached and may be appealable by the Prosecution. Able counsel on both sides adequately addressed the standard of review on appeal.

Dr. Assa'ad-Faltas, however, prays the Court to also allow such procedure for claims of *autrefois acquit* and *autrefois convict* because the Double Jeopardy Clauses of the U.S. and South Carolina Constitutions are also intended as **immunity** from being haled into court again, not merely as affirmative defenses.

Respectfully submitted and served on the Attorney General and Office of Appellate Defense by hand-delivery to their respective offices on 21 January 2011.

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The Supreme Court of South Carolina

The State,

Appellant,

v.

Gregory Kirk Duncan,

Respondent.

ORDER

Marie Assa'ad-Faltas, MD, MPH, has filed a document in this case entitled "Humble and Respectful Contribution in the Nature of a Letter to the Court in the Hope of Assisting its Honor in Deciding a Difficult Case." Therein, Dr. Assa'ad-Faltas, who observed oral arguments in this case, seeks to "suggest[] answers" to issues that were discussed by the parties and this Court during oral argument.

On December 23, 2009, this Court issued an order limiting Dr. Assa'ad-Faltas' ability to file documents with this Court. That order was based on Dr. Assa'ad-Faltas' history of complete disregard of proper judicial procedures, which constitutes an abuse of the judicial process and results in a waste of judicial resources. Dr. Assa'ad-Faltas' filing in the above-captioned case is yet another example of Dr. Assa'ad-Faltas' complete misunderstanding


and disregard for the judicial process. Dr. Assa'ad-Faltas' attempt to "weigh in" on a decision in this case is prohibited by the rules of this Court, is completely inappropriate, and quite frankly, shocking. We can only imagine the reaction of Dr. Assa'ad-Faltas if this Court allowed a random third party to weigh in on one of the many actions she has filed in this Court.


Accordingly, Dr. Assa'ad-Faltas' request to suggest answers to the issues in this case is DENIED.

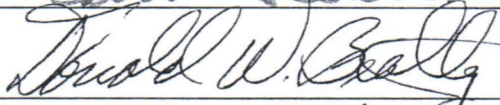
Moreover, we take this opportunity to address other instances of inappropriate contact Dr. Assa'ad-Faltas has had with members of this Court. Dr. Assa'ad-Faltas has on several occasions approached a member of this Court while the member was engaged in purely personal activities unrelated to the performance of any official duties. For instance, in the document she has filed in the above-captioned case, she states she "had a chance encounter with the Honorable Justice Beatty." All of these contacts were made in an apparent attempt to discuss matters that she either has filed or is considering filing with this Court. This conduct is also prohibited by the rules of this Court and completely inappropriate. Accordingly, we hereby prohibit Dr. Assa'ad-Faltas from directly contacting any member of this Court. This includes, but is not limited to, contact made in person, by phone or in writing.


Any communications that she wishes to make to this Court or to any member of this Court should be submitted in writing to the Clerk of the Supreme Court of South Carolina. Any violation of the prohibition contained in this order may be punished as contempt of this Court.

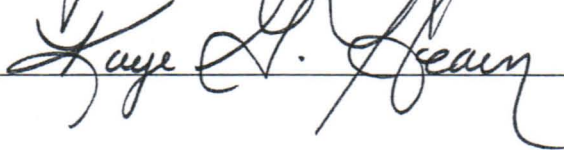
IT IS SO ORDERED.


_____ C. J.


_____ J.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina

February 3, 2011

cc: Ms. Marie Assaad Faltas
Chief Appellate Defender Robert M. Dudek
Senior Assistant Attorney General
S. Creighton Waters
Solicitor Robert Mills Ariail

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S.C. SUPREME COURT

BEFORE THE SUPREME COURT OF SOUTH CAROLINA

The State of South Carolina

Appellant

v.

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Respondent

**MOTION FOR THE COURT TO RECONSIDER ITS DENIAL OF Dr. Assa'ad-Faltas' Amicus Brief
AND TO RECONSIDER ITS INCORRECT AND UNFAIR DESCRIPTION OF HER**

Marie Assa'ad-Faltas, MD, MPH, respects the law's civilizing effect too much to let some members of South Carolina's current Supreme Court's false impression of her deprive the law of her contributions.

Contrary to the Court's statement at ORDER p2, Dr. Assa'ad-Faltas understands the U.S. Constitution and various judicial systems well. She understands that the excellent Mr. Dudek's mission in the above-captioned case is to get his client acquitted while Mr. Waters' mission is to get the defendant convicted.

But members of the public, specially absolute pacifists like Dr. Assa'ad-Faltas, have a compelling interest in a new statute not being interpreted so leniently as to give blanket immunity for the taking of innocent lives under false pretext of defense of one's "castle." She also understands that this Court must not only elicit the intent of the legislature but also interpret statutes consistently with public safety and order.


Nor should the Court "imagine Dr. Assa'ad-Faltas' reaction" to *amici* in her cases. She solicited them or asked courts to invite them. A further answer may be derived from this case having been scheduled to be observed live by high-school students who were unable to attend. Would this Court have been "shocked" if one of young students had been present and asked the Court in post-argument ask-the-Court: "Why not use the clear and convincing standard?" Seriously, would this Court have been "shocked" or marveled at such young student. At those students' age, Dr. Assa'ad-Faltas discussed with her late God-father legal issues from *Code Napoleon* to "vice de forme" elements to Makran Ebeid's impeachment trial techniques.

Dr. Assa'ad-Faltas' Coptic Orthodox heritage and exquisite education make her far from a "random" person and compel her to greet every judge/Justice she knows and sees in public. Failure to do so would have been rude and disrespectful. This Court ascribing wrong motives to **totally impromptu encounters is unfair**. Nor did she ever discuss the substance of any case *ex parte*. In the most recent encounter she asked the Honorable Justice Beatty only if His Honor remembers her and if she may write the Court a letter. **NOTHING** about the substance of that letter was discussed with His Honor or any other judicial officer.

Further, Dr. Assa'ad-Faltas always filed her submissions with this Court's Clerk although its rules do allow for certain relief to be granted by one Justice. Dr. Assa'ad-Faltas has no problem following the rules. **But** she does not lack courage to assert that the rules are applied unequally to her, *e.g.*, **many of her applications were either not transmitted to the Court at all or pretermitted by the Chief Justice alone**.

Dr. Assa'ad-Faltas thus prays the Court to look at the quality of her advocacy, not the initials behind her name ("MD, MPH," not "JD"), to appreciate the unique perspective she brings as a scientist who loves the law, to consider the "clear and convincing" standard for immunity the taking of a life, to provide procedure for immediate appeal of denials of constitutional or statutory immunities, and to reconsider its false impression of her. Egypt is not a random country, and her daughters are not random persons.

Respectfully submitted and served on the Attorney General and Office of Appellate Defense by hand-delivery to their respective offices on 4 February 2011.



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The Supreme Court of South Carolina

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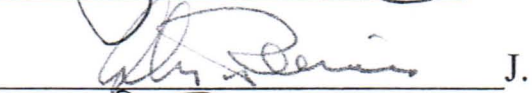
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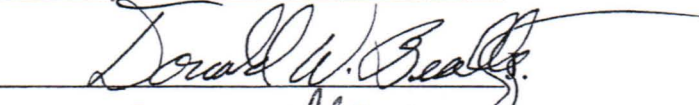
The Honorable Edward W. Miller
Greenville County
Trial Court Case No. 2007-GS-23-05016

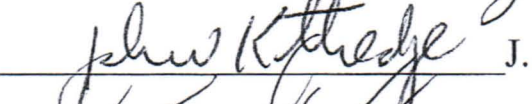
ORDER

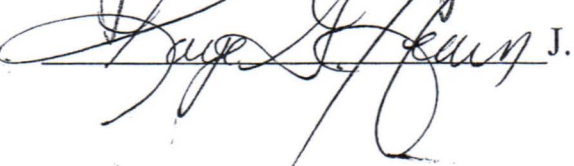
While the Court appreciates Dr. Faltas' good faith attempt to opine on a legal matter pending before the Court, she misapprehends the nature and purpose of an Amicus Curiae brief. The Motion for Reconsideration is respectfully denied.


C.J.


J.


J.


J.


J.

Columbia, South Carolina

April 7, 2011

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