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Before THE COURT OF APPEALS ("CoA") of the STATE OF SOUTH CAROLINA ("SC") ("SC CoA")

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SC Appellate Case: 2022-000339

JUN 10 2022

From RICHLAND County No. 2019-CP-40-01374

CITY OF COLUMBIA, Respondent

v.

Marie Assa'ad-Faltas, MD, MPH, Appellant

SC Court of Appeals

Appellant's Motion to Require SC's Commission on Indigent Defense ("SCCOID") to Undertake Appellant's Representation OR to Allow Appellant to Prosecute this Appeal pro se.

Defendant/Appellant Marie Assa'ad-Faltas, MD, MPH ("Dr. Assa'ad-Faltas" or "Dr. Faltas") is still permitted to *pro se* move an SC court for appointment of counsel. While there is no *per se* constitutional right to *pro se* advocacy in criminal appeals or obligation for the states to provide appeals *at all*, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution has been *consistently* read as requiring *every state which chooses to provide for appeals* to make appeals accessible to all persons within its jurisdiction regardless of ability to pay. *Griffin v. Illinois*, 351 U.S. 12 (1956); *Eskridge v. Washington Bd. of Prison Terms and Paroles*, 357 US 214 (1958); *Burnsv. Ohio*, 360 US 252 (1959); *Douglas v. California*, 372 U. S. 353 (1963); *Draperv. Washington*, 372 US 487 (1963); *Rinaldi v. Yeager*, 384 US 305 (1966); *Mayer v. City of Chicago*, 404 US 189 (1971); *Lindsey v. Normet*, 405 US 56 (1972); *MLB v. SLJ*, 519 US 102 (1996); and ancestry and progeny. In *Burns*, 360 US at 257-8, the U.S Supreme Court ("SCOTUS") was very clear:

Although the State admits that petitioner "in truth and in fact" is a pauper, it presses several arguments which it claims distinguish *Griffin v. Illinois*, 351 U. S. 12, and justify the Ohio practice. First, the State argues that petitioner received one appellate review of his conviction in Ohio, while in *Griffin*, Illinois had left the defendant without any judicial review of his conviction. This is a distinction without a difference for, as *Griffin* holds, *once the State chooses to establish appellate review in criminal cases, it may not foreclose indigents from access to any phase of that procedure because of their poverty.* 351 U. S., at 18, 22. *This principle is no less applicable where the State has afforded an indigent defendant access to the first phase of its appellate procedure but has effectively foreclosed access to the second phase of that procedure solely because of his indigency.*

Since *Griffin* proceeded upon the assumption that review in the Illinois Supreme Court was a matter of right, 351 U. S., at 13, Ohio seeks to distinguish *Griffin* on the further ground that leave to appeal to the Supreme Court of Ohio is a matter of discretion. But this argument misses the crucial significance of *Griffin*. In Ohio, a defendant who is not indigent may have the Supreme Court consider on the merits his application for leave to appeal from a felony conviction. But as that court has interpreted § 1512 and its rules of practice, an indigent defendant is denied that opportunity. *There is no 258*258 rational basis for assuming that indigents' motions for leave to appeal will be less meritorious than those of other defendants.* Indigents must, therefore, have the same opportunities to invoke the discretion of the Supreme Court of Ohio. [italics and underlining added for emphasis]

In *Folkes v. State*, SC Appellate Case 2016-000415, Mr. Robert ("Bob") Dudek, Chief of SC Appellate Defense ("SCAD"), volunteered his mistaken ideas about appeals as of right from SC's summary courts. On page 12, lines 3-9, of the transcript of Mr. Folkes' PCR hearing, Mr. Dudek testified:

[I]n South Carolina, there is **one appeal as a matter of right. From magistrate's court, it's to circuit court**, from general sessions court, which this one is, there is an automatic appeal to the state court of appeals. There is no appeal as a matter of right, as you know, to the supreme court.

RECEIVED JUN 10 2022 APPELLATE DEFENSE

Mr. Dudek and SCCOID are wrong about the appeal from magistrate's court to circuit court being the only one as of right. There is a further appeal as of right from the circuit court to this Court in cases originating in summary courts. SC has two tiers of *direct appeals as of right from summary court cases* because most other states have chosen for their summary courts an **automatic erasure of the summary court's decision upon notice of appeal**. SCOTUS described in *Colten v. Kentucky*, 407 U.S. 107, 112-13 (1972), thus with only footnote 4 included:

Kentucky, like many other States,^[4] has a two-tier system for adjudicating less serious criminal cases. In Kentucky, at the option of the arresting officer, those crimes classified under state law as misdemeanors may be charged and tried in a so-called inferior court, where, as in the normal trial setting, a defendant may choose to have a trial or to plead guilty. If convicted after trial or on a guilty plea, however, he has a right to a trial *de novo* in a court of general criminal jurisdiction, *Brown v. Hoblitzell*, 307 S. W. 2d 739 (Ky. 1957), so long as he applies within the statutory time. **The right to a new trial is absolute.** A defendant need not allege error in the inferior court proceeding. If he seeks a new trial, the Kentucky statutory scheme contemplates that the slate be wiped clean. Ky. Rule Crim. Proc. 12.06. Prosecution and defense begin anew. By the same token neither the judge nor jury that determines guilt or fixes a penalty in the trial *de novo* is in any way bound by the inferior court's findings or judgment. The case is to be regarded exactly as if it had been brought there in the first instance. A convicted defendant may seek review in the state appellate courts in the same manner as a person tried initially in the general criminal court. Ky. Rev. Stat. § 23.032 (Supp. 1968). However, a defendant convicted after a trial or plea in an inferior court may not seek ordinary appellate review of the inferior court's ruling. His recourse is the trial *de novo*.

[4] E. g., Ariz. Rev. Stat. Ann. § 22-371 *et seq.* (1956 and Supp. 1971-1972); Ark. Stat. Ann. § 44-501 *et seq.* (1964); Colo. Rule Crim. Proc. 37 (f); Fla. Stat. Ann. § 924.41 *et seq.* (Supp. 1972-1973); Ind. Ann. Stat. § 9-713 *et seq.* (1956 and Supp. 1971); Kan. Stat. Ann. § 22-3610 *et seq.* (Supp. 1971); Me. Dist. Ct. Crim. Rule 37 *et seq.*; Md. Ann. Code, Art. 5, § 43 (1968); Mich. Stat. Ann. § 28.1226 (Supp. 1972); Minn. Stat. §§ 488.20, 633.20 *et seq.* (1969); Miss. Code Ann. §§ 1201, 1202 (Supp. 1971); Mo. Sup. Ct. Rule 22; Mont. Rev. Codes Ann. § 95-2001 *et seq.* (1947); Neb. Rev. Stat. § 29-601 *et seq.* (1964); Nev. Rev. Stat. § 189.010 *et seq.* (1969); N. H. Rev. Stat. Ann. §§ 502:18, 502-A: 11-12 (1968); N. M. Stat. Ann. § 36-15-1 *et seq.* (Supp. 1971); N. C. Gen. Stat. §§ 15-177 *et seq.*, 20-138 (1965 and Supp. 1971); N. D. Cent. Code § 33-12-40 *et seq.* (1960); Pa. Stat. Ann., Tit. 42, § 3001 *et seq.* (Supp. 1972-1973); Pa. Const., Sched. Art. 5, § 16 (r) (iii) (Philadelphia); Tex. Code Crim. Proc., Arts. 44.17, 45.10 (1966); Va. Code Ann. § 16.1-129 *et seq.* (1950); Wash. Rev. Code § 3.50.380 *et seq.* (Supp. 1971); W. Va. Code Ann. § 50-18-1 *et seq.* (1966 and Supp. 1971).

In SC, the appeal from summary court to circuit court is the first appeal as of right which replaces the trial *de novo* in other states but does NOT replace the appeal as of right from circuit court to this Court. In the second-tier-*direct appeal* from this conviction (SC Appellate case 2015-000941, *vide* <https://ctrack.sccourts.org/public/caseView.do?csIID=59393>) now attacked simultaneously but separately under SC Criminal Rule 29(b) and SC's PCR Act, then-SC-Chief-Justice Toal required SCCOID to represent Dr. Faltas if she is found indigent (17 June 2015 ORDER). But now, SCCOID refused to even test her for indigency, believing that SCCOID has no duty to undertake Dr. Faltas' representation in criminal appeal from summary court even if she were indigent. Further, as amply shown in the attached *extracted* but complete transcript of the 4 February 2019 proceedings before Dentsville Magistrate Newsom ("DMN"), this case involves the worst possible insult to the truth-finding functions of the courts: **perjury and subornation of perjury.** The issue of Dr. Faltas' false accuser and pretend-"victim" Dinah Gail Steele's having had to be "on medication" for four years because Dr. Faltas gave Steele a one-sheet-of-ordinary-paper one-page letter on 11 September 2009 could have been **objectively and conclusively resolved** had Dr. Faltas been accorded the right to compulsory process which is undeniable to criminal defendants.

Yet, DMN *erroneously* held that right does not obtain in his court, 4 Feb 2019 Tr. pp 59-61:

[Page 59, line 20] **Defendant Faltas:** But these two possibilities –

[21-22] **THE COURT:** We are not dealing with possibilities. You have a motion, you have the burden of proof.

[23-25] **Defendant Faltas:** **Sir, it's either of the two. And these are the only two plausible possibilities and both of them support my motion. I just cannot testify for someone else. I'm telling you –**

[Page 60, lines 1-7] **THE COURT:** And I agree with you. So, that's why I don't know whether you need to testify or not. You are basing your legal argument on what the other people might say and there's nobody here that you've called that can say anything that supports your record. **Much the same as if the state summonses a witness and they don't show up for trial. I can't make the witness show up.** Okay? Understand that.

[8-11] **Defendant Faltas:** **No, sir.** I'm sorry. **The 6th Amendment to the U.S. Constitution guarantees a criminal defendant the right to *compulsory process*, compulsory, not voluntarily, not invitational. You are trying –**

[12] **THE COURT:** This is a motion. This is not your trial.

[13-14] **Defendant Faltas:** **It has the same constitutional guarantees –**

[15-16] **THE COURT:** Go on. You can argue that on your appeal if I rule against you.

[17-18] **Defendant Faltas:** **Of course you are going to rule against me. It was obvious from the beginning.**

[19 to page 61, line 1] **THE COURT:** Ma'am, you say one other disrespectful thing to this court I am going to hold you in contempt. And you know I will because I've done it before. I don't want to do it t. It's a last resort. Do not push. Your disrespect for people and the system is obvious and I think if we put these people under oath that you've brought in here today, none of whom you've called by the way, if they were asked they'd agree. Now you may be respectful or you may stand down and [60*61] I'll rule with what I have at this time.

But SC Circuit Judge Brown found that right *does* obtain in magistrate court, p 5 of 11 March 2022 ORDER denying *timely* Rule 59(e) motion ("Appellant asks this court to address whether the Compulsory Process Clause of the Sixth Amendment applies to a Rule 29(b) hearing. This court finds that it does. See S.C. Code Ann. §22-3-930; Rule 13, S.C. R. Magis. Ct.").

This meritorious appeal requires this Court to decide at least two important issues for this State: (1) SCCOID's duty to represent indigent criminal defendants on their second-tier-*direct* appeal from circuit court to this Court; and (2) SC magistrate courts' duty to transfer to circuit court, under the latter's concurrent jurisdiction, any criminal case the fair resolution of which requires compulsory process to witnesses beyond magistrate court's territorial jurisdiction.

WHEREFORE, without waiving her right to *pro se* advocacy, Dr. Faltas moves this Court to make SCCOID undertake her representation, whether through SCAD or appointment of outside counsel. Alternatively, this Court should independently and conscientiously honor Dr. Faltas' right to *pro se* advocacy everywhere or await SC's Supreme Court's decision of Appellate Case 2021-000815.

Submitted by hand-delivery **and served by hand-delivery to the respective Columbia offices with additional courtesy copies bye-mail** on: (1) Mr. Marshall James, Counsel for Respondent City of Columbia; (2) SCCOID and SCAD *via* Messers Dudek, Ryan and Young; and (3) Mr. Timothy Griffith, all on 10 June 2022, and all God so willing.



s/Marie Assaad-Faltas, MD, MPH, Defendant/Appellant, here Movant *pro se*

P.O. Box 9115, Columbia, SC 29209

Phone: (803) 783-4536 Cell: (330) 232-4164

e-mail: Marie.Faltas@hotmail.com and MarieAssaadFaltas@GMail.com

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The Supreme Court of South Carolina

City of Columbia, South Carolina, Respondent,

v.

Marie-Therese Assa'ad-Faltas, MD, MPH, Appellant.


Appellate Case No. 2015-000941

Lower Court Case No. 2013-CP-40-03522

ORDER

Appellant has filed a notice of appeal from an order of the circuit court affirming her municipal court conviction for simple assault. Appellant has also filed a motion to appoint counsel.

The motion to appoint counsel is held in abeyance. Appellant shall, within thirty (30) days of the date of this order, complete an affidavit of indigency and submit it to the Commission on Indigent Defense, Division of Appellate Defense (Appellate Defense) for a determination of indigency. If Appellate Defense determines appellant is not indigent, appellant shall have ten (10) days from the date of that determination to obtain counsel to represent her in this matter. If Appellate Defense determines appellant is indigent, Appellate Defense shall represent appellant in this matter.


C.J.
FOR THE COURT
Pleicones, J., and Beatty, J., not participating

Columbia, South Carolina

June 17, 2015

cc:

Marie Assa'ad Faltas

David A. Fernandez, Esquire

Robert M. Dudek, Esquire

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APPELLATE DEFENSE

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State of South Carolina
County of Richland
City of Columbia,

In the Columbia Magistrate Court
Case # 2019-CP-40-01374

Vs.

Transcript of Record

Marie Thérèse Assa'ad-Faltas, Defendant.

**Motion to Reopen Hearing held before the Honorable Phillip F. Newsom,
presiding judge, in the magistrate court for the County of Richland; Columbia, South Carolina,
on February 4, 2019.**

Appearances:

Jessica R. Mangum, Esquire, Appearing for the City
Defendant appearing *pro se*

Transcribed by: Nancy S. Ahrens

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Transcription omitted from beginning of audio:

Minute 00:02:51 - 00:02:53 Clerk: The court would come to order. All rise. The honorable Judge Newsom presiding.

Minute 00:02:54 - 00:02:57 **THE COURT:** All right. You may be seated.

Minute 00:03:01 - 00:03:09 [Page 1, lines 1-2, **THE COURT:** All right. Dr. Faltas, we are here for your motion for a new trial. I'll be glad to hear from you.

[3] **Ms. Mangum:** Your Honor, I'm sorry, may I briefly?

[4] **THE COURT:** Sure.

[5-6] **Ms. Mangum:** I was under the impression that we are here today on a motion to recuse.

[7-8] **THE COURT:** That is one motion. But no. This is the whole thing. This thing has been spread out long enough.

[9-10] **Defendant Faltas:** And also there is a motion to transfer it.

[11] **THE COURT:** I'll hear both of those motions.

[12-13] **Defendant Faltas:** May I address the court from a seated position because of my knee issues, please?

[14-15] **THE COURT:** If you'll put the microphone close to where we can hear you.

[16-19] **Ms. Mangum:** And, Your Honor, just to clarify the notice that I received from the court today was for a motion to recuse, a motion to transfer and perhaps a motion of non-appointment. Those are the only motions that I understand are before the court.

[20] **THE COURT:** No, this is the whole thing.

[21] **Ms. Mangum:** Yes, Your Honor.

[22-23] **THE COURT:** All right. Unless I grant the first two, then, of course, it will be those. All right. Yes, ma'am.

[24] **Defendant Faltas:** Good afternoon, sir.

[25] **THE COURT:** Good afternoon.

[Page 2, lines 1-2] **Defendant Faltas:** First of all, I just want to remind people that I love them; and –

[3-5] **THE COURT:** All right. Ma'am, get to your point. You had a motion to recuse. Tell me your grounds. I've already denied it once unless you have new grounds.

[6-8] **Defendant Faltas:** Well, the new ground you are aware of it and I think it would be totally inappropriate during the pendency –

[9-12] **THE COURT:** I totally disagree with you for those reasons. **And after having conferred with the Office of Disciplinary Counsel, I'm denying your motion.** We are going forward. Next. What is your other motion?

[13-15] **Defendant Faltas:** All right. The next motion is the motion to transfer to circuit court for several reasons. And, sir, I'm taking exception to your denying.

[16] **THE COURT:** I understand that.

[17-19] **Defendant Faltas:** May I just put on the record why because you know the rules that one has to put the reasons on the record or one has waived it.

[20] **THE COURT:** You can quickly make a summary of them, yes.

[21-22] **Defendant Faltas:** Sir, I think it is unheard of for a jurist to sit while there is a disciplinary complaint against him.

[23] **THE COURT:** Okay.

[24 to page 3, line 2] **Defendant Faltas:** Because the law is the appearance of impartiality. Any reasonable person would say that there is an appearance of partiality and there is the presumption of vindictiveness.

[3-4] THE COURT: Is there a case about **presumptive, presumption of vindictiveness?**

[5] Defendant Faltas: A whole lot of cases.

[6] THE COURT: **Okay. Can you cite one?**

[7] Defendant Faltas: Not off the top of my head.

[8] THE COURT: **Okay. I didn't think so.**

[9-10] Defendant Faltas: No, no, no. I can bring them. And this includes cases where, for example, a person -

[11-18] THE COURT: All right. Let me just stop you right there. You can submit whatever you want in support of that. I'll tell you directly I conferred with counsel and I asked could it be proper given that **and I was told emphatically if I thought I could give you a fair trial I could proceed. That's the litmus test**, not what you think, not what you hope, whether I can give you a fair trial. Now at the conclusion of this hearing and any other hearing I hear, if I don't do that, then you have protections in there. Okay?

[19-20] Defendant Faltas: First of all, sir, Disciplinary Counsel is not the authority on that.

[21-22] THE COURT: **All right, ma'am, I'm not going to debate it any more. Do you want to go to the next motion?**

[23] Defendant Faltas: Could I just put on the record -

[24] THE COURT: **No.**

[25] Defendant Faltas: - my other grounds.

[page 4, line 1] THE COURT: Quickly.

[2-3] Defendant Faltas: Okay. **The presumption of vindictiveness -**

[3] THE COURT: We've - we already heard that.

[5-6] Defendant Faltas: **is when a judge gets reversed in a case he doesn't get to sit on the same case upon remand. So, there are -**

[7-8] THE COURT: **When I get reversed, if I get reversed, I wouldn't sit on the case. I agree.**

[9-12] Defendant Faltas: Okay. The other thing is that given what you did to me when you sent me to be stripped naked before two strange females who for all we know may have been lesbians, we don't know. But I do **not feel it is safe for me to advocate -**

[13-14] THE COURT: You made that at the last hearing; and I heard that motion and I denied it. Okay.

[15] Defendant Faltas: I need to put it on the record.

[16-18] THE COURT: **No, you don't.** That's part of the record. It's already in the record. That whole thing is in the record. You don't need to do it again.

[19-22] Defendant Faltas: Well, speaking of record, the last CD that I received was not possible to download from the disc. The previous CDs - okay. The CD that I received last time it was like the music CD you buy at the store. **The previous one -**

[23 to Page 5, line 1] THE COURT: I don't know that. **There were two CDs provided that I've seen transcripts for that our courts submitted a transcript to the appropriate authorities for the two hearings.** We [4+5] have only had two. All right. Let's go on to the motion to transfer.

[2-6] Defendant Faltas: Okay. The motion to transfer is for judicial economy because there is in the circuit court a pending PCR case from the same conviction. And it also includes after-discovered evidence as it must because the law is that after-discovered evidence can also be raised in PCR.

[7] THE COURT: **Okay.**

[8-15] Defendant Faltas: So, it's judicial economy **too**. The second is that the subpoena power in circuit court is broader and, in fact, Rule 13 has just been submitted as an amendment to the General Assembly that now under Rule 13 two things can happen. A party can request the subpoena and can also request that it be a subpoena *duces tecum* which used to be in civil cases but not in criminal cases. The other thing is that in magistrate court you can only subpoena within your county; **but -**

[16] THE COURT: **I know all that very well, yes.**

[17-18] Defendant Faltas: I mean can I put it on the record as a basis?

[19] THE COURT: Sure. Yeah.

[20-21] Defendant Faltas: And there are witnesses, necessary witnesses -

[22] THE COURT: For? For the transfer?

[23 to page 6, line 5] Defendant Faltas: No, necessary witnesses for the actual rule 29(b) hearing who are from other counties. So, in this court I cannot get them; and I cannot get them *duces tecum*. [5+6] Additionally, additionally, your staff has given me hard time about subpoenaing witnesses and having been told that this hearing will just be about those two motions. And, in fact, I have an e-mail from Ms. Raquel Welch - I'm sorry, Raquel Perez, that says exactly that. It says it will just be on the motion to recuse and the motion to transfer. **And if -**

[6] THE COURT: Hold on a second. **Is that correct?**

[7] **(Court confers off the record.)**

[8-10] THE COURT: **You told him it was just those two motions?** No, we've got the whole thing. **We've got a motion to reopen.** Okay. All right. **Continue with your motion to transfer.**

[11-15] **Defendant Faltas:** Since it is the court's own staff who told me that I think **I'm prejudiced because I haven't subpoenaed my witnesses;** and in any event, I cannot subpoena them, those who reside outside Richland County. **And as I said the circuit court has broader subpoena power; so, it's a matter of judicial economy.**

[16-22] THE COURT: Okay. You are well aware that I'm under the constraints of what the law is now, both appellate cases as well as the statutory cases. The only time we have the right to subpoena records is when it is statutorily provided. Given that, I cannot grant your motion to transfer. **The other thing is it was a circuit court that ordered this case sent here.** And the way the courts work, Circuit Court is here, I'm down here. If he or she —

[23] **Defendant Faltas:** I —

[24 to Page 7, line 6] THE COURT: Don't interrupt me. If he or she tells me I will do something, I can't say no. So, it doesn't work that way. And the [6*7] motion, the reason why they sent it back down is because the motion for a new trial is proper in the court, the level of court in which the trial was had. So, it's proper in this court for any other reason. I realize there are some limitations as far as you subpoena people outside the jurisdiction of this court. From what I've been told, you want to subpoena the sheriff —

[7] **Defendant Faltas:** No, sir.

[8-13] THE COURT: Yes, ma'am. You want to subpoena me; you want to subpoena our court administrator who is retired and lives in another county. Judge Kirby Shealy, you wanted to subpoena him. I am not going to let you abuse the process for folks that have nothing to do with this case. What witnesses that are germane to your motion to reopen are not here?

[14-18] **Defendant Faltas:** Okay, I'll tell you; but just let me also put on the record that those people that you mentioned were related to the motion to recuse, not the motion to reopen. And you in fact faulted me for not having subpoenaed the Sheriff himself. So, all of this is related but—

[19] THE COURT: Okay.

[20] **Defendant Faltas:** I'll tell you who —

[21-23] THE COURT: Who are the witnesses that you want to subpoena that would — **and you've got to give me a summary of what their testimony would be.**

[23 to Page 8, line 1] **Defendant Faltas:** Well, yes, sir, I will but under protest -- I know — let me put it on the record please under protest that I'm not [7*8] required to give my defenses —

[2-3] THE COURT: **This is not a defense. You have the burden of proof for the motion to reopen the case.**

[4-5] **Defendant Faltas:** Those people have been subpoenaed last time. They did not show up but ...

[6-7] THE COURT: What evidence would you glean from those people?

[8] **Defendant Faltas:** I'm about to tell you.

[9] THE COURT: Well, good.

[10-11] **Defendant Faltas:** Okay. First of all, Theodore Nichols Lupton.

[12-13] THE COURT: **And what would he testify to that would be grounds for a new trial?**

[14-15] **Defendant Faltas:** He would — I need to put one other thing on the record.

[16] THE COURT: Okay. Go ahead.

[17-18] **Defendant Faltas:** You, said and you volunteered that you think I like the chase more than the capture. **So —**

[19-20] THE COURT: That's already on the record. Move on. We are talking about your witnesses.

[21 to page 9, line 2] **Defendant Faltas:** Because you know now when you said what would they say that would be grounds. What you are going to do is say, no, that won't be grounds; therefore, the witness is not necessary. Therefore, you haven't been prejudiced. Exactly the same process that you think I'm here not for the result, just for the [8*9] process and you will rule against me thinking that I am here just for the process because I like the chase more than the capture. And so I —

[3-4] THE COURT: Dr. **Faltas, let me stop you. If there is evidence that is after-discovered evidence that meets the litmus test to grounds for me to reopen, I have no problem at all reopening the case.**

[6] **Defendant Faltas:** I have no confidence in that —

[7-12] THE COURT: I understand that but let's move on. You've asked me to recuse myself a couple of times. I've denied it. **Don't go there any more.** Tell me about the witnesses that aren't here that you think ought to be subpoenaed; but you've got to tell me what they are going to say. **Just because you want to subpoena somebody doesn't mean they are germane.**

[13-17] **Defendant Faltas:** Okay. The first one is Theodore Nichols Lupton. He was a lawyer and he provided, served on the City of Columbia discovery including mental examination and physical examination, all medical records. They did not give him anything. At least that's what I think if he's truthful he is going to testify.

[18-19] **THE COURT:** **How does that fall into the category of after-discovered evidence?**

[20] **Defendant Faltas:** I'm getting to it.

[21] **THE COURT:** Okay,

[22-25] **Defendant Faltas:** Lo and behold, in the middle of the trial, my false accuser masquerading as my victim says that she has been on medication since January 2010 and she used the word "still." So, she was on medication for three and a half—

[Page 10, line 1] **THE COURT:** **And what's this person's name?**

[2] **Defendant Faltas:** Theodore Nichols Lupton.

[3-5] **THE COURT:** No, I'm talking about the witness, your accuser. You said Mr. Lupton, he subpoenaed records and they didn't give them to him. Okay. Tell me the other person,

[6] **Defendant Faltas:** Dinah Gail Steele.

[7] **THE COURT:** Okay. And you want her to testify?

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

[9-10] **THE COURT:** **And what will she say now that would be after-discovered or different from before?**

[11-21] **Defendant Faltas:** That she either did not actually go to the doctor, she did not actually have prescriptions; or if she did — I'm saying — I'm not saying that I'm telling you, promising you that this is what she will say. I'm telling you that if she tells the truth this is what she will have to say. It's one of two things. Either she was on medication that day and that would also have affected her competence to testify or she wasn't and she lied. And the reason that I need the *duces tecum* power is that I need to subpoena her medical records as far as what she volunteered. She just blurted it out. Nobody had even asked her. She said I'm still on medication for it. Okay.

[22] **THE COURT:** Okay. Who else?

[23-25] **Defendant Faltas:** So, the other thing is if she did have a nervous breakdown or whatever and did go to a doctor, we need the records because —

[Page 11, Lines 1-3] **THE COURT:** **I've already ruled I can't do that. I can't change the law. I know what you want the law to be. I can't change it. We are operating under the terms of the law as it stands.**

[4-5] **Defendant Faltas:** But under the — if it were transferred —

[6-7] **THE COURT:** It's not going to be transferred. I've ruled on that.

[8-9] **Defendant Faltas:** Okay. Let me say one other thing just to put it on the record to protect myself.

[10] **THE COURT:** Okay.

[11-12] **Defendant Faltas:** That the circuit court has concurrent jurisdiction because —

[13] **THE COURT:** I'm well aware of that. I went to law school.

[14-16] **Defendant Faltas:** Well, you know something, Your Honor. And I'm not being flip or anything. For some reason on the Bar, it doesn't say which law school Your Honor went to.

[17-18] **THE COURT:** Okay. That has nothing germane to this hearing. Go forward.

[19] **Defendant Faltas:** Okay. So ...

[20-21] **THE COURT:** What other witnesses would you have and what evidence?

[22-24] **Defendant Faltas:** I need to take my breath please. I need to take my breath. You are aware I'm functioning only on half a larynx. **Or if you're not aware —**

[25 to Page 12, line 4] **THE COURT:** **Do you have something in writing that you've [11*12] submitted as far as your grounds for reopening. So far, you've told me two people. One to subpoena records. You knew that at the trial. That's not after-discovered. Even if it were, the other is the witness against you that you accused of lying at the trial.**

[5-7] **Defendant Faltas:** No, I have something in writing. I have two things in writing. One of them — so could you please take mercy on my ability to get my breath.

[8-16] **THE COURT:** I'll give you five minutes; but when you come back, I need to -because I'm going to make a decision about whether I need to continue in the interest of justice to get witnesses. **If there's witnesses on something that is right on point that would be sufficient as the rules of law are for a motion for a new trial based on after-discovered evidence and that's what you filed for after-discovered evidence. I believe you said there were two people who had lied; and you had evidence of that.** I want to hear a summary of that before I determine whether I need to subpoena those people.

[17-18] **Defendant Faltas:** And I don't need a five-minute break. I may need just ten-second breaks.

- [19-21] THE COURT: Sure. Oh, yeah, absolutely. If you need longer than that, Dr. Faltas, let me know. **I'll be glad to give you five minutes if you need it or so.**
- [22-23] **Defendant Faltas:** So, you asked me if I had something in writing. And in fact, I have two motions in writing.
- [24] THE COURT: Okay.
- [25 to Page 13, line 9] **Defendant Faltas:** One was before the circuit court to [12+13] suspend the appeal so I could bring the after-discovered evidence to the trial court. And that was filed in December 2013; and it was never scheduled for a hearing. The second thing I filed is with the Columbia Municipal Court in February 2014; and that is the motion for after-discovered evidence itself. For some reason, not only did the Columbia Municipal Court not send you the full file, your staff when, I came to look at the full file, were very non-cooperative and would not let me look at what the City sent and would not go back and ask the City to send —
- [10-11] THE COURT: **Now which staff are you referring to as my staff? Dentsville staff or central court?**
- [10-11] **Defendant Faltas:** Well, actually at that time they were both there, the two Stefanies. And in fact, Mr. Truluck witnessed it.
- [14-16] THE COURT: **Because I'm not aware that we've ever had the full file at the Dentsville office.**
- The file has been kept here at central court.
- [17-19] **Defendant Faltas:** Well, I came in late March of last year to look at what the City of Columbia had sent you. **And it did not include the actual motion.**
- [20] THE COURT: Okay.
- [21-22] **Defendant Faltas:** And, in fact, before it was transferred to your office —
- [23-24] THE COURT: **I know I've reviewed that motion.** I wouldn't be familiar with what I just told you if I had not. **It's been a while.**
- [25] **Defendant Faltas:** So, I mean please —
- [Page 14, line 1] THE COURT: **Well, you know your motion.**
- [2] **Defendant Faltas:** Pardon me?
- [3] THE COURT: You know the basis of your motion.
- [4-5] **Defendant Faltas:** **I do know it; but you asked me if there was something in writing. And there is something in writing and —**
- [6-15] THE COURT: All right. Let me rephrase that so you — what evidence do you — tell the court, that you would have if you could call a witness to say that evidence. Let me read you the litmus test you are going to have to go through. In order to obtain a new trial on after-discovered evidence, the party must show that the evidence would probably change the result of the trial if a new trial were had. Has it been discovered since the trial, could not have been discovered before the trial by the exercise of due diligence, is material to the issue of guilt or innocence and is not merely cumulative or impeaching. That's by South Carolina Supreme Court.
- [16-18] **Defendant Faltas:** And just for your information I may be the only person in South Carolina who orally argued a rule 29(b) motion before the Court **of Appeals** —
- [19-20] THE COURT: **And that's good but it has nothing to do with this case.**
- [21] **Defendant Faltas:** I know the standard.
- [22] THE COURT: Okay.
- [23] **Defendant Faltas:** And I previously —
- [24 TO PAGE 15, LINE 1] THE COURT: Now, Dr. Faltas, I'm going to give you one more chance to tell me what evidence it is that you have that there is a [14+15] witness that did not get subpoenaed that I need to continue —
- [2] **Defendant Faltas:** **Okay. The witness is Charlene Crouch.**
- [3-5] THE COURT: **And what would Charlene Crouch say? She was one of the other ones you called, said lied at the trial, correct?**
- [6] **Defendant Faltas:** Yes, sir.
- [7-9] THE COURT: **And she's told you she lied and she's going to come forward and confess that? Or you are hoping to put her on the stand and break her down.** What is it?
- [10] **Defendant Faltas:** Can I answer **fully** —
- [11] THE COURT: **Yes, I've asked you.**
- [12-14] **Defendant Faltas:** Okay. She lied about her criminal records; and I have **after that**, after the trial obtained objective evidence that she lied about her criminal record.
- [15] THE COURT: Okay.
- [16-20] **Defendant Faltas:** And that evidence was provided in mid-January 2014 by then-Chief of Columbia Municipal Court; and it was two copied, it was a letter to me that was copied at that time to Chief Justice Toal and Judge Lee and to the City of Columbia. There was a charge of drunkenness.
- [21] THE COURT: **That's not impeaching.**

[22] **Defendant Faltas:** (inaudible)

[23-24] **THE COURT:** That would not be allowed. Ma'am, that would not be allowed to be brought out anyhow.

[25] **Defendant Faltas:** And I —

[Page 16, lines 1-2] **THE COURT:** You would not be able to ask her if she had a conviction for that because that is not one of the ones that goes —

[3-4] **Defendant Faltas:** It doesn't matter whether I would be allowed or not if she voluntarily said that she had not been —

[5] **THE COURT:** And you have a certified copy of her record?

[6-7] **Defendant Faltas:** Yes, sir, I do but I did not bring it in because I came in expecting to be —

[8-9] **THE COURT:** And that's the information I'm trying to glean from you. All right?

[10-11] **Defendant Faltas:** Okay. No, I mean I have it in the car. It's just that I didn't —

[12] **THE COURT:** We can take a break and you can get it.

[13] **Defendant Faltas:** Yes, thank you.

[14-19] **THE COURT:** Because if I determine that some evidence or person that is not here today because you all thought we were just going on those other two things, I can continue that part in order to get them. But if it's somebody that lives in Summerville — I just picked that town out, I don't know if there's any witnesses that live in Summerville— I can't subpoena them. Okay?

[20] **Defendant Faltas:** May I —

[21-22] **THE COURT:** Yes. Oh, yeah, anything you want to submit to me.

[23] **Defendant Faltas:** Could we ask you to make a copy of it.

[24-25] **Mr. Truluck:** Your Honor, permission to show it to opposing counsel.

[Page 17, line 1] **THE COURT:** Sure. Absolutely.

[2] **Defendant Faltas:** The reason it matters are two things.

[3] **THE COURT:** Okay.

[4-5] **Defendant Faltas:** The first thing is that she volunteered it.

[6] **THE COURT:** Okay.

[7-9] **Defendant Faltas:** The second thing is that that arrest involved also her having been put on trespass notice from my false accuser's property.

[10] **THE COURT:** Okay.

[11] **Defendant Faltas:** By that woman, Charlene Crouch.

[12] **THE COURT:** Okay.

[13-15] **Defendant Faltas:** In your court in 2011, that day when you had me strip-searched, that was the trial and there was a man, Charles White —

[16] **THE COURT:** Do you want to bring it up?

[17-20] **Mr. Truluck:** Yes, Your Honor. I've showed opposing counsel what I believe I'm handing you is an incident report for Mrs. Charlene Crouch and a disposition sheet and a letter from judge Turner, Your Honor.

[21] **THE COURT:** (pause) Okay.

[22-25] **Defendant Faltas:** So, in your very court, that man, Charles White, testified under oath but in-camera and I have the recordings and I got the recordings from the court. I did not sneak a recording device or anything.

[PAGE 18, LINE 1] **THE COURT:** Okay.

[2-3] **Defendant Faltas:** And he said that, yes, he was paying that woman for sex. In addition —

[4] **THE COURT:** What's that got to do with —

[5] **Defendant Faltas:** Okay. Follow with me, please.

[6] **THE COURT:** — after-discovered evidence.

[7] **Defendant Faltas:** Follow with me.

[8] **THE COURT:** Okay. I will but speed it up.

[9] **Defendant Faltas:** Okay.

[10-11] **THE COURT:** Because if you heard that in 2011, that is a classic proof of not after-discovered evidence.

[12] **Defendant Faltas:** Could you please follow with me?

[13] **THE COURT:** Yes, ma'am.

[14-15] **Defendant Faltas:** In April of 2012, Charlene Crouch went — and that's not an allegation, that's a conviction.

[16] **THE COURT:** Okay.

[17-20] **Defendant Faltas:** She was drunk and she went to Charles White, her prostitution customer, and she was banging on his window and wanting the money. He called the police and the police issued her a no trespass on that.

[21] **THE COURT:** Okay.

[22 to Page 19, line 5] **Defendant Faltas:** She got convicted in May 2012. In April, 2013, which is when my trial was, she volunteered that she didn't have the trial for that drunkenness yet. So, that's a lie. **The second thing is that in between she had an agreement with Steele that she would [18*19] testify for Steele against me in return for Steele not enforcing the trespass against Charlene so Charlene can go to Charles White who is a tenant of Steele and give him her services and get money.** In fact, in fact, I also have pictures of Charlene in her car going to that place for which she had been —

[6-7] **THE COURT:** And you had those pictures back in 2011 or whatever, did you not?

[8] **Defendant Faltas:** No, no, no. Those were after the trial.

[9] **THE COURT:** After the 2011 trial?

[10] **Defendant Faltas:** No, after the 2013 trial.

[11] **THE COURT:** Okay. All right.

[12-14] **Defendant Faltas:** Okay. In addition, recently because, when this matter was before the circuit court, Charles White called me at four o'clock in the morning —

[15] **THE COURT:** Okay.

[16-20] **Defendant Faltas:** And told me that he would tell me stuff but that I would have to relieve him from the subpoena and one of the things he told me is that he now gives Charlene Crouch three hundred dollars a month for her to go to his apartment and do services.

[21] **THE COURT:** Okay.

[22-24] **Defendant Faltas:** So, if that trespass notice is in place, that would indicate — in addition, I have an actual letter from this Charles White saying —

[25] **THE COURT:** I'll be glad to see it.

[Page 20, line 1] **Defendant Faltas:** What?

[2] **THE COURT:** I'll be glad to see it. A letter to you?

[3] **Defendant Faltas:** I have it in the car.

[4-5] **THE COURT:** Okay. We'll take a break and let you go out and get it.

[6-13] **Defendant Faltas:** And also, also it is in the record of the Supreme Court in the appeal on that case, there is that letter from 2009 by Charles White. In any event, so the — he had said there was an agreement - - and again I'm not saying that he won't come here and lie but what we know from your 2011 trial — I mean from the 2011 trial over which you presided — is that he admitted under oath that she's a prostitute and he uses her for prostitution services. He told me when he woke me up —

[14-15] **THE COURT:** Again, what's that got to do with this case and grounds to reopen?

[16-19] **Defendant Faltas:** If you read the transcript and if you read the actual motion where I highlighted; and it was a bench trial under duress because there were reasons I was prevented from having a jury trial.

[20-21] **THE COURT:** Which time is this you are talking about? In 2011? That was a jury trial, ma'am.

[22-23] **Defendant Faltas:** April 25, 2013, the conviction which I'm trying to reopen —

[24] **THE COURT:** Was a bench trial.

[25] **Defendant Faltas:** Yes, sir.

[Page 21, line 1] **THE COURT:** Okay.

[2-3] **Defendant Faltas:** And it wasn't a bench trial voluntarily, it was a bench trial under duress.

[4] **THE COURT:** Okay.

[5-9] **Defendant Faltas:** But if you read the transcript, and I have highlighted that part in the two motions, the bench judge, who's no longer on the City of Columbia, said he relied most significantly on Charlene Crouch who was basically — I'm not quoting him here *verbatim* but I am quoting him *verbatim* in the motion.

[Minute 00:35:10 of audio recording] [10] **THE COURT:** Uh-huh.

[11-16] **Defendant Faltas:** That she is neutral and reliable. If he knew that she was unreliable and had an interest — this is classical, classical rule 406(c) that evidence that indicates that the witness has a reason to lie is admissible. Right? Has interest. So, her interest was to be able to go to her customer in spite of the trespass that she had.

[17-18] THE COURT: But you raised that in the trial about the trespass.

[19-20] **Defendant Faltas: No, I didn't know about it. I didn't have the police report. That's the point.**

[21] THE COURT: Okay.

[22-23] **Defendant Faltas:** I got the police report much later. And in fact –

[24-25] THE COURT: Whether or not she was on trespass notice, what would that have to do with –

[Page 22, Line 1] **Defendant Faltas:** That she lied in order to have Dinah Steele – I'm sorry. I'm so sorry. Those two minutes.

[3] THE COURT: That's all right. Catch your breath.

[4-5] **Defendant Faltas:** That she lied to help Dinah Steele in order to have Dinah Steele not enforce that trespass.

[6] THE COURT: You assume this.

[7-8] **Defendant Faltas:** No, I'm not assuming. Charles White told me.

[9] THE COURT: Is Charles White here?

[10-11] **Defendant Faltas:** He's not here because he wasn't subpoenaed.

[12] THE COURT: Or was subpoenaed and didn't come.

[13] **Defendant Faltas:** Last time he was subpoenaed –

[14-15] THE COURT: Did he give you a deposition or sworn statement saying that he would testify to that?

[16-18] **Defendant Faltas:** Well, you can put me on the stand; and I can tell you that he told me that. Now when do you want me to have to take a deposition if you aren't –

[19 to Page 23, line 6] THE COURT: All right, ma'am. Ma'am, I'm not going to get not an argument with you. Okay? Most of these hearings of this type take about five to ten minutes. I'm giving you a little bit longer. All right. I've yet to hear one thing that meets the criteria of the law to reopen the case. It's a hope or, if not, it was after-discovered evidence and understand the caveat. Let me read you that last little part where it says is not merely cumulative of impeaching. This has to do [22*23] with whether or not you assaulted somebody. That was the issue that you were tried on and you said that the person who you assaulted lied and you said this other lady lied also. Now what is the evidence? She said that at the trial. In the Supreme Court case, they said that you alleged that both of those witnesses lied. That was your argument.

[7-8] **Defendant Faltas:** At that time, I did not have the proof; and the proof was that which came after the trial.

[9] THE COURT: What is that proof?

[10] **Defendant Faltas:** The proof is what Mr. Truluck gave you.

[12] THE COURT: A court record from 2012?

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

[14-16] THE COURT: And if it was a court record in 2012, you went to court in 2013. Tell me why you could not have discovered it under reasonable effort at that time?

[17-20] **Defendant Faltas:** Because they did not put it on the public index. They specifically hid it from the public index to this day. They are the City of Columbia; and your court and every court, they are supposed to send every conviction to SLED.

[21-22] THE COURT: But S.L.E.D. and the public index are two different places.

[23-24] **Defendant Faltas:** Okay. They didn't send it to SLED and they did not put it on the public index.

[25] THE COURT: Okay.

[Page 25, lines 1-2] **Defendant Faltas:** So, it could not show up on any reasonable search –

[3-6] THE COURT: And if assuming what you said could not have been discovered at that time, tell me why the fact that she did not acknowledge a drunkenness charge would be other than merely impeaching as to – criteria says it has to be more than that.

[7-8] **Defendant Faltas:** It's not that she did not acknowledge it. It's that she lied ---

[9] THE COURT: She lied about it. Okay.

[10-13] **Defendant Faltas:** Voluntarily lied about it. It wasn't as if she was unbiased. It hid the concomitant trespass notice which went with it which gave her an incentive – Judge, may I just put on the record your facial expression –

[14 TO PAGE 25, LINE 1] **THE COURT:** I'm trying to digest what you are saying and, no, ma'am. You have in the past tried to manipulate the record. I saw the alleged transcript that you sent with the extra comments that you put in about shocked expressions from so and so. So, for you to accuse me — I'm sitting here trying to in my mind to see if there are sufficient grounds to give you a chance for either a continuance if there is some witness that has something — you have yet to tell me something yet — that's not here, I would strongly consider giving a continuance to get them. And if there is some evidence that you have that's after-discovered that's not merely impeaching, I'll be glad to give you a new trial. It doesn't bother me in the least. You seem to want to accuse everybody of having the worst motives, not being [24*25] truthful, not being this. Okay.

[2] **Defendant Faltas:** Judge, may I show you something just —

[3-5] **THE COURT:** What I'd like you to do is tell me what the evidence is you purport to have that would support the motions for after-discovered evidence.

[6-7] **Defendant Faltas:** The evidence is that, previously, in the harassment case which, thank God, I defended myself *pro se* —

[8-11] **THE COURT:** I don't want to hear any ad libs about what you did. It doesn't matter whether you went to the Supreme Court, whether you represented yourself. Just give me the evidence, okay? I need the evidence.

[12-21] **Defendant Faltas:** Okay. The evidence is there is a long pattern of Dinah Gail Steele forcing her tenants to lie against me and to get me convicted and the most recent instance of that is Charlene Crouch lying in the April 25, 2013, trial in order to overcome the trespass notice which she earned by virtue of her drunkenness conviction on Steele's property and which I have evidence that she violated later either by the consent of Steele and by White telling me that there was an agreement. First of all, as I told you, I have a written letter from White dating back to August 2009, and it's written and it was actually admitted —

[22-23] **THE COURT:** I'll give you thirty seconds if you need it. I'm not going to hold you to that. Okay.

[24 to Page 26, line 1] **Defendant Faltas:** The written letter from Charles White that says that the tenants will testify against me [25*26] to protect their own interest with Dinah Steele who is their landlady **or was their landlady.**

[Minute 00:44:01 of audio recording] [2] **THE COURT:** And that was 2009. Correct?

[3-4] **Defendant Faltas:** But then back in January of 2018, when that motion was going to be heard in circuit court —

[5] **THE COURT:** Yes, ma'am.

[6-18] **Defendant Faltas:** Charles White called me at four o'clock in the morning and gave me information and he was trying to negotiate with me, if he gave me that information I wouldn't subpoena him or I would relieve him from the subpoena. I think he had at that time already received the subpoena but he did not show up. **And in any event, the Honorable Jocelyn Newman she as you say transferred the motion to the Columbia Municipal Court.** I had the hearing in early March 2018 before Municipal Judge Susan Porter; and to her I presented the actual motion that was filed with the Columbia Municipal Court and that the Columbia Municipal Court did not send here. So that motion has all the information I'm telling you. So, Charles White was not subpoenaed this time here because we thought it was only going to be those two motions. He was subpoenaed last time.

[19] **THE COURT:** **And didn't come.**

[20-24] **Defendant Faltas:** He didn't come. And also he was subpoenaed to the circuit court twice. **One time he did show up but at that time Judge G. Thomas Cooper recused himself;** but then the second time before Judge Jocelyn Newman, he did not show up; but he called me at four o'clock in the morning.

[25] **THE COURT:** **Where does this gentleman live?**

[Page 27, line 1] **Defendant Faltas:** He lives on Byron Road.

[2] **THE COURT:** Just a second. He was summoned to come to court the same as everybody else. He was summoned to come to court today the same as everybody else. **We summonsed all of them.**

[5] **Defendant Faltas:** He's not here.

[6] **THE COURT:** I understand.

[7] **Defendant Faltas:** **Why is that my fault?**

[8] **THE COURT:** You've yet to tell me — clearly, he's not going to be a voluntary witness to say what you want him to say if he doesn't show up but there's a summons.

[11] **Defendant Faltas:** Say that again, please.

[12-14] **THE COURT:** **It doesn't appear he's going to be a voluntary witness to say what you are telling me you hope he'll say by his not showing up.**

[15] **Defendant Faltas:** So, how do we solve that?

[16-17] **THE COURT:** **We don't.** You have the burden of proving to me that you have evidence. Right now you don't have the evidence.

[18-20] **Defendant Faltas:** Well, sir, I don't have the evidence because I don't have the witnesses and I don't have the witnesses because they didn't show up. **So, if I —**

[21-22] **THE COURT:** What other witnesses didn't show up? Ms. Steele is sitting here.

[23] **Defendant Faltas:** Teresa Ingram.

[24 to Page 28, line 1] **THE COURT:** And what would she be able to add that was after-discovered that would be likely if the case was reopened [27-28] would result in a different verdict?

[2-3] **Defendant Faltas:** That she too was paid in the form of free rent by Dinah Steele to testify falsely against me.

[4-7] **THE COURT:** **And you learned this how?** I'm just trying to make the record, help you out. If you need to catch a breath, I'll be glad to let you catch your breath. If you need more time, if you need a five or ten minute break, I'll be glad to give it to you.

[4-7] **Defendant Faltas:** I continuously learned about it. Some of it recently. I learned after the harassment trial in which Ingram was a false witness against me.

[11] **THE COURT:** when was that trial? Is that the 2011?

[12] **Defendant Faltas:** 2010 in General Sessions.

[13] **THE COURT:** Okay.

[14-16] **Defendant Faltas:** Now, I am answering you honestly; but please take note of the completeness. I began to learn about it after the trial; but I continued to learn about it —

[17-18] **THE COURT:** Did you raise that issue in the 2013 criminal trial **what you already knew about her motivation for not being —**

[19] **Defendant Faltas:** In fact, —

[20] **THE COURT:** Yes, ma'am.

[21-25] **Defendant Faltas:** If you look at note twelve, since you all think that *City of Columbia versus Assa'ad-Faltas* from the state supreme court is like the word of God from Mt. Sinai or something, but it specifically said that I shouldn't have brought that in. In fact, they fault me for trying. If you look at note twelve.

[Page 29, lines 1-12] **THE COURT:** And I'll read for the record. "Appellant spent most of this time discussing circumstances surrounding her unrelated harassment charges in circuit court, including details of how she successfully defended herself *pro se* against these charges despite not having received full discovery although the municipal court gently reminded appellant to please stay on the topic of the assault charges. Appellant balked at the suggestion that her testimony might be irrelevant and continued to discuss immaterial matters. Appellant also submitted into evidence transcript excerpts from unrelated court proceedings and described in detail how her involvement in numerous litigation endeavors has disrupted her life."

[13 to Page 30, line 10] **Defendant Faltas:** May I just say that, in a motion to open for after-discovered evidence, you are not bound by that because that was based on the limited record without the after-discovered evidence. Second, when they say that time, I was given only five minutes; and I was cut off mid-sentence. So, I didn't; you asked me whether I brought that up in the April 25, 2013, trial. I was very limited to five minutes. When I tried to bring it up I was interrupted, as you see the Supreme Court relates, by the trial bench. And so, Judge, it cannot be a catch 22. **It cannot be that they affirmed on an incomplete record; therefore, I cannot complete the record with after-discovered evidence. I am not saying you really have to throw away any preconception based on the supreme court's affirmance because that was based on an incomplete record.** What [29-30] you really have to test is whether the record as complete with the after-discovered evidence will result in a different result. **And you cannot foreclose me from submitting a record complete with the after-discovered evidence which would have been admitted had it been known at that time by the fact that the conviction was affirmed on an incomplete record.** Do you see what I'm saying? **You are putting me in a catch 22.** You are saying our great infallible state supreme court affirmed the conviction; therefore, there can never be anything that I would hear that would impugn that conviction. And what I'm telling you—

[Minute 00:53:31 of audio recording] [11-12] **THE COURT:** I've not said that at all. That's not the standard.

[13] **Defendant Faltas:** No, I know. The standard —

[14-20] **THE COURT:** **I understand the standard.** Okay? **I don't need your argument about what you think the standard ought to be. I have the standard in front of me.** Okay. What I need from you is give me this evidence, **this elusive**

evidence, that somebody who was subpoenaed is not here. **You've given us Charles White.** Part of this information was available to you in 2009 and at the trial, the 2011 trial.

[21] **Defendant Faltas:** No, no, Your Honor.

[22] **THE COURT:** Okay. Any other evidence that you have?

[23-24] **Defendant Faltas:** Yes. Let me make clear. There was evidence given to me in January 2018.

[25] **THE COURT:** Okay.

[Page 31, lines 1-16] **Defendant Faltas:** By Charles White by phone at four o'clock in the morning that he pays Charlene Crouch three hundred dollars a month and there was an agreement for her to testify against me in return for Steele not enforcing the trespass notice because Charlene was no longer a tenant there. At one time she was; but she was either forcibly or I don't know what the deal was in 2010. And about Teresa Ingram – and I'm sorry, before I had to get my breath I wanted to finish – not to finish but to make sure that it's in the record that the written letter from Charles White was admitted by your colleague, Beverly Stroman, at that time was Beverly Stroman Boyd, in an eviction trial in September, the end of September and the first day of October 2009. So, that letter is of record in this court. So, the pattern is classical. As I said, rule 406(c) which is a witness's incentive to lie. As far as Teresa Ingram, in that eviction trial she pretended she saw me. I don't know what she said but she pretended to have been an eyewitness to that incident.

[17] **THE COURT:** Which incident? The alleged assault?

[18] **Defendant Faltas:** The alleged assault, yes, which is —

[19] **THE COURT:** And she testified at the trial?

[20] (pause)

[21-22] **Defendant Faltas:** The date of the alleged assault is in September 11, 2009.

[23] **THE COURT:** Did she testify at the trial in 2013?

[24] **Defendant Faltas:** No.

[25] **THE COURT:** Okay.

[Page 32, lines 1-2] **Defendant Faltas:** And please realize that I had no control whatsoever over my defense.

[3] **THE COURT:** Okay.

[4-11] **Defendant Faltas:** And, in fact, they faulted me for wanting to have participation in my defense; and lo and behold, recently in 2018, the U.S. Supreme Court said, No, no. It's not the defense counsel who is in control of the defense, it's the defendant. So, I'm sorry you all love to — sorry, I take that back. I have been told that I'm frivolous when it was ahead of the law and when decisions by the U.S. Supreme Court, not in my case but in other cases, vindicated me. Another one —

[12-15] **THE COURT:** All right. I don't care about any other case. Stick to the point. I've got five: Ted Lupton, Dinah Steele, Charlene Crouch, Charles White and Teresa Ingram. What else? What's your other evidence?

[16] **Defendant Faltas:** Teresa Ingram.

[17] **THE COURT:** And she's not here.

[18] **Defendant Faltas:** I know but was she summoned?

[19-20] **THE COURT:** I have no idea. If she was on the list, she was summoned, yes.

[Minute 00:58:14 of audio recording] [21] **Defendant Faltas:** Okay. So, she's not here.

[22] **THE COURT:** Okay.

[23-25] **Defendant Faltas:** So, she would testify if she tells the truth that Dinah Steele has a pattern of bribing witnesses against me. And one of the bribes —

[Page 33, line 1] **THE COURT:** And you know that how? She told you that?

[2] **Defendant Faltas:** I'm sorry?

[Minute 00:58:31 of audio recording] [3] **THE COURT:** She told you that?

[4] **Defendant Faltas:** I'll tell you who told me.

[5] **THE COURT:** Mr. White in a letter of 2009.

[6-7] **Defendant Faltas:** No, he told me that after Teresa Ingram was evicted.

[9-10] **THE COURT:** Well, what does it matter if she would lie or not lie if she didn't testify at the trial you are trying to get reopened?

[11-14] **Defendant Faltas:** I'll tell you what does it matter. What it matters is that initially Dinah Steele said she had three witnesses and she listed the three witnesses, in fact, in the case —

[15] **THE COURT:** And did not call all of them. Is that what you are saying?

[16-17] **Defendant Faltas:** No, that's not exactly what I'm saying.

[18] **THE COURT:** Okay. What is it?

[19-21] **Defendant Faltas:** What I'm saying is that the prosecution did not call Teresa Ingram even though Dinah Steele pretended that she was an eyewitness.

[22-24] **THE COURT:** That's just exactly what I said. She said she was a witness and then didn't call her and you said, no, that's not what happened.

[25 to page 34, line 5] **Defendant Faltas:** But could I complete that? The reason [33*34] they did not call her is that she no longer was beholden to Dinah Steele because Dinah Steele had already evicted her and Teresa had gone back to live in Sumter. In addition, that's what I wanted to show you. (pause) This is an annotated transcript of Teresa Ingram's testimony in the harassment trial where she was the false accuser.

[Minute 01:00:53 of audio recording] [6-7] **THE COURT:** **And the harassment trial has nothing to do with your trial in 2013.** They addressed that in your appellate record.

[8 to page 35, line 5] **Defendant Faltas:** I am trying to tell you that Teresa Ingram, if she tells the truth would say that, yes, Dinah Steele paid her in the form of free rent to testify against me. And when it didn't work, and this is annotated, it's not just —it's objective three hundred — and I'll tell you exactly how many. It's annotated with the footnotes three hundred seventy-six objective evidence of perjury. So, by 2013, Teresa Ingram, whom Dinah Ms. Steele had listed as an eyewitness and had also put on the stand in the eviction trial to say that she witnessed; it and it was Dinah Steele, the plaintiff *pro se* and she called Teresa Ingram. So, she suborned her perjury right on the stand. But by 2013, Teresa Ingram was no longer beholden to Dinah Steele because Dinah Steele has evicted her in March 2010. So, not only did she not call her, she said, "No, no, no, no. Teresa wasn't one of the three witnesses." So, if Teresa would tell the truth, she would say that Dinah gave her free rent to testify against me, that after she testified falsely against me and they still could not get me convicted, she was evicted. She was of no use to her; and then that is more evidence that Dinah Steele lied. She lied about the identity of [34*35] her witnesses because she knew that the witnesses she had listed when they were beholden to her were no longer beholden to her. And, Judge, actually as I told you, I jokingly call myself the queen of Rule 29(b) because and let me — I mean the fact that the Court of Appeals reversed Judge G. Thomas Cooper based on my oral argument, **my *pro se* oral argument —**

[7-12] **THE COURT:** Again, **I have no interest in any other case in which you may have been successful.** I'm well aware you have over fifty appearances at the Supreme Court, twenty something the Court of Appeals. You've been to the U.S. Supreme Court. All those has nothing to do with this hearing or the purpose of this. Let me say this. You need to wrap up. Have you got anything additional?

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

[14-17] **THE COURT:** I'm not interested in anything about Teresa Ingram because you could have discovered that before with reasonable due diligence and she didn't testify at the trial. Anything else?

[18-19] **Defendant Faltas:** Well, yes, I'm trying to tell you that one of the standards in the after-discovered —

[20-21] **THE COURT:** Let me deal with the standards. I'm asking you if you have some evidence.

[22] **Defendant Faltas:** Yes, sir, I do.

[23] **THE COURT:** What is it?

[24 to page 36, line 1] **Defendant Faltas:** But that evidence has to do with the new light that the evidence may not fit neatly in light of the five [35*36] items that you said.

[12-3] **THE COURT:** But I'm bound by what the law is, not what you want it to be.

[4-8] **Defendant Faltas:** Actually, the law says that if new evidence sheds a new light on the entire situation; and I have a case that says that; and I have argued that case to the Court of Appeals and won. And that was also the new light. **So, I'm telling you that the cumulative —**

[9-11] **THE COURT:** Okay. I'll consider that when I hear everything. Anything additional other than what you've said and **I'll give you a chance to talk to me about the cumulative.**

[12-16] **Defendant Faltas:** Yes. There was after discovered, in 2016, that in the house that Dinah Steele owns alone a homicide happened. That homicide was apparently by the same gun and in the sole presence of the same man, Larry Mason, whose second wife died by homicide, gunshot wound to the head —

[17-19] **Ms. Mangum:** Your Honor, I'm sorry, I hate to be rude but I just have to object to this. This is very personal in nature, not at all related to what's going on.

[20] **THE COURT:** Yes. How is this related to your trial?

[21] **Defendant Faltas:** I'll tell you how it is.

[22] **THE COURT:** Very quickly.

[23-25] **Defendant Faltas:** She said that she collapsed and went to the doctor in 2010, January 2010, and she was taking medication at least until April 2013.

[Page 37, line 1] **THE COURT:** She being who?

[2] **Defendant Faltas:** Dinah Steele, my false accuser.

[3] **THE COURT:** Okay.

[4-6] **Defendant Faltas:** So, if she did go to a doctor, it may be that she was living with people who had access to guns and who have a history of using them for homicides.

[7] **THE COURT:** Okay.

[8-9] **Defendant Faltas:** Not because she was so frightened that I gave her a letter that she had to be treated for four years. So, ...

[10] **THE COURT:** Go ahead.

[11] (pause)

[12-13] **THE COURT:** Again, I'll offer you. If you need a five-or-ten-minute break, we'll be glad to break.

[14] **Defendant Faltas:** When I do this, I need ten seconds.

[15-16] **THE COURT:** That's fine. And just for the record, I've given you the breaks every time that you've asked.

[17] **Defendant Faltas:** And I thank you for it.

[18-19] **THE COURT:** Sure, no problem. Common courtesy and I do that.

[20-21] **Defendant Faltas:** I want to say that I love you. I believe love —

[22-23] **THE COURT:** If it pertains to this case, you can say it. If it doesn't pertain to this case, wait and say it another time.

[24 to page 38, line 12] **Defendant Faltas:** Okay. **What I want you to be aware of if you please, and I'm putting this as one of my arguments, that [37*38] anything that happened at the trial was new evidence because there was no prior discovery on it.** And, in fact, if you read the transcript not only did the judge say that he relies on Charlene Crouch because she's neutral, the Prosecution, the very Prosecution which is the City of Columbia, they intentionally did not submit the conviction to SLED in order to prevent discovery of it, said that she didn't have a dog in that fight and that, she meaning Charlene Crouch, and that she is of sterling character because she came and testified so many years after the fact. **What we discovered after that is that she had a dog in that fight; and that it wasn't because she was of sterling character. It was because she is a prostitute who wants to have access to her customer who had once —**

[13] **THE COURT:** *I don't need to hear that any more.*

[14 to page 39, line 4] **Defendant Faltas:** All right. The other thing is I would say and, you know, as I've said, I've been pioneering several things where I've been vindicated. I would say that the transcript itself, the transcript of the trial is after-discovered evidence for me, for Marie Assa'ad-Faltas, the *pro se* defendant. Because even if stuff was said during the trial, and I was there to hear it, I had no control over impeaching or following up or anything. In fact, something that is so incompetent by Ted Lupton and that's why he needs to be here. It may be, it may be but I'm not sure, but this is something that I need to explore, that he was pressured to throw that case. Once Dinah Steele blurted from the witness stand that she is on medication still, and that was her word, not mine, not anyone's. She volunteered. Any competent [39*40] lawyer would have said, "Judge, I don't think this witness is competent to testify today. We need to know what medication she's on and if it is affecting her mental status." He didn't do that. Why? Why didn't he do it?

[5] **THE COURT:** **Again, this is not your PCR hearing, ma'am.**

[6-7] **Defendant Faltas:** No, I know it's not the PCR hearing; but that's the hearing —

[8-13] **THE COURT:** **I'm going to give you thirty more seconds to quickly summarize any other additional evidence you may have.** I don't need any lengthy things about the hearing 2010 to 2012, 2011. I'm interested in the 2013 after-discovered evidence that I have to make a decision based on the standards of the Supreme Court in spite of whether or not you approve of their rulings. I'm bound by them.

[14-16] **Defendant Faltas:** **All you need to make a decision now is whether you are going to allow me to subpoena these witnesses. I haven't presented —**

[17] **THE COURT:** **They have been summoned, ma'am.**

[18-22] **Defendant Faltas:** All right. **If you'll grant me a continuance so you can enforce your summons. I was not allowed to present any evidence so far because I don't have my witnesses. But if you do want the evidence I can take the witness stand and testify from the witness stand.**

[23-24] **THE COURT:** **And your testimony would be what? What they said?**

[25] **Defendant Faltas:** What I discovered after the fact —

[Page 40, lines 1-2] **THE COURT:** **You've been going on for an hour about what you allege you discovered.**

[2-4] **Defendant Faltas:** But that is argument of advocate, it's not testimonial.

[5-14] **THE COURT:** You know what, ma'am, before — before at these hearings, before we even get to where the need — **whether I feel there is a need to take testimony, I glean from the lawyer or the defendant if they are unrepresented what the summation is and then I have to make the decision about whether I need to have any testimony.** Okay. If there is nothing on the basis, just on the face of it, that comes close to meeting the criteria, I could not take testimony on a fishing expedition calling up witness after witness in hopes that if they feel the same way about life and things as you do that they'll change and say what you want them to say.

[15-16] **Defendant Faltas:** **That's putting the cart before the horse, Your Honor. And as I told you —**

[17-19] **THE COURT:** And if I'm wrong, if I rule against you after this is over and I'm wrong and you appeal and they overrule me, then, okay, we'll live with that.

[20 to Page 41, line 1] **Defendant Faltas:** Judge, I want to testify because I need to put evidence on the record that's evidence, not as argument, because you are setting me up not only to not get my after-discovered evidence hearing in a fair way, but also to be easily overruled by an appellate court because I didn't present evidence. And what I'm telling you is evidence comes from the witness stand, [40*41] not from argument of advocate.

[2-4] **THE COURT:** What is it you would testify to in a summary that would meet the criteria that I've read to you? And I'll be glad to read those five criteria again.

[5-6] **Defendant Faltas:** Well, I told you I know those criteria than better than Judge G. Thomas Cooper who is a circuit judge and **who has misapplied them in my —**

[7-8] **THE COURT:** **I missed the point of Judge Cooper having any relevance to this case.**

[9-10] **Defendant Faltas:** I'm telling you I know the factors and it also know —

[11-20] **THE COURT:** Then if you know the factors, then please share with me. I'm only reading them, okay? Share with me what it is your testimony, if I need it; I need to make a decision whether you can testify to something, that you have something to offer direct evidence other than you think in your heart the same thing as you argued in your trial that these people lied against you. Okay? Merely because you say you think they lied, I need now for after-discovered proof that they lied. What is it that you can testify to directly that could do that? If there is, I'll be glad to put you on the stand and swear you in and let you testify. Can you summarize it?

[21-22] **Defendant Faltas:** What I was told by Charles White, not what he feels or what I feel, what I was told.

[23] **THE COURT:** **Which is hearsay.**

Defendant Faltas: **Well, it's hearsay because you didn't enforce the summons.**

[Page 42, lines 1-3] **THE COURT:** **Ma'am, we summonsed him. If he doesn't show, it might suggest to you he wasn't going to say what you hoped he would say.**

[4] **Defendant Faltas:** What?

[5-6] **THE COURT:** **It might suggest to you that he wasn't going to testify and say what you would hope that he would say.**

[7-11] **Defendant Faltas:** **No, it actually suggests the opposite.** And this is very new and very unfair assumption. It doesn't say that the court will not enforce a summons or a subpoena just because it thinks that if a witness showed up. **I mean this is so unfair. I'm sorry; and if I quote you on that.** To the contrary, **it shows —**

[12] **THE COURT:** **All right. What else could you testify to?**

[13-15] **Defendant Faltas:** That I did not assault that woman, that after I read the transcript, I found more evidence that I could not have discovered that they didn't send it to SLED.

[17-18] **THE COURT:** **What was the evidence that you found?**

[17-18] **Defendant Faltas:** **That the woman had been convicted and had a trespass notice since May 2012; but in April 2013 —**

[19] **THE COURT:** **She lied about her conviction.**

[20] **Defendant Faltas:** **And that she had interest in being —**

[21-22] **THE COURT:** **Do you know where in the transcript that she testified?**

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

[24] **THE COURT:** Do you have a copy of that?

[25 to Page 43, line 6] **Defendant Faltas:** **No, you should.** I mean I have a copy in [42*43] my car because I didn't again expect to have the full thing. **But if the City of Columbia had returned the entire record to you,**

you should have it. Again, I go back to March 2018, when I asked your staff. I asked the two Stephanies to make sure that the City of Columbia returns the full record and they said no, the judge has what he needs. And I said it's not the judge's burden.

[7-11] *Ms. Mangum*: Your Honor, if I might assist on page six of the transcript on the simple assault trial in the City of Columbia Municipal Court, there is a pretrial discussion about several of those charges to include the drunkenness charge. That is on page six, Your Honor.

[12] *Defendant Faltas*: It wasn't pending,

[13] *THE COURT*: All right. Hold on a second.

[14-15] *Defendant Faltas*: In addition, she said she didn't know anything about the sexual battery charge but at that time —

[16-17] *THE COURT*: Do you have — now I have a transcript of record. Is this the complete transcript of record or is this —

[18-19] *Ms. Mangum*: No, Your Honor. I'm sorry. It's a hundred and thirty plus pages.

[20-21] *THE COURT*: I don't know if it's here. Do you have a copy of it?

[22] *Ms. Mangum*: I do.

[23] *THE COURT*: Let me see it.

[24] *Defendant Faltas*: Could I see?

[25 to Page 44, line 1] *THE COURT*: Sure. Absolutely. I want you to make sure [43*44] that that's the transcript. I don't want

[2-3] *Defendant Faltas*: But I want again to put on the record that I object to the fact that the City did not return the whole thing.

[4] *Ms. Mangum*: The whole record is available online.

[5-6] *Defendant Faltas*: It's not. The City's record is not available, the actual —

[7-8] *THE COURT*: Look at page six, please, ma'am. (pause) Have you reached page six?

[9] (pause)

[10] *Defendant Faltas*: Now I have page six.

[11] *THE COURT*: Do you have page six?

[12-13] *Defendant Faltas*: I have page six now; and may I say something?

[14] *THE COURT*: Sure. Yes.

[15] *Defendant Faltas*: I will read it.

[16-17] *THE COURT*: No. I want to see it. You don't need to read it to me, I can read.

[18] *Ms. Mangum*: Your Honor, may I approach?

[19] *THE COURT*: Sure.

[20] *Ms. Mangum*: It does continue on to page seven.

[21] (pause)

[22 to page 45, line 2] *THE COURT*: So, there was a decision made at that time that she would be allowed to be impeached based on a conviction for one charge but then there was another charge that she wasn't allowed, then there was discussion of this after-discovered. That pending case [44*45] that apparently was decided and they said it wasn't decided but apparently had been. Is that —

[3-4] *Ms. Mangum*: Your Honor, I was not the prosecutor in this case. Today is the first time that I've had anything to indicate a prior conviction —

[5-7] *THE COURT*: Let me just put on the record. Even if she — in the discussion about the ability to impeach people on prior convictions, a drunkenness charge is not an impeachable offense.

[6] *Defendant Faltas*: Judge, it's not the charge itself. It's the fact of the trespass —

[10-11] *THE COURT*: She would not have been allowed to ask her about that charge if it was not an impeachable offense. Okay?

[12-14] *Defendant Faltas*: No, sir, I would have been allowed to ask about the trespass under Rule 406(c) which is the witness's motive to not tell the truth.

[15] *Ms. Mangum*: Your Honor, if you look at the transcript —

[16] *Defendant Faltas*: But the reason, the reason —

[17] *THE COURT*: Stop. You interrupted counsel. Yes, ma'am.

[18-20] *Ms. Mangum*: If you look at the transcript continuing on page seven, I believe there's some discussion about the fact that she would not be able to use that to talk about as far as motive.

[21] *THE COURT*: I saw that. Go ahead, Ms. Faltas, Dr. Faltas.

[22-25] *Defendant Faltas*: It's a *U.S. vs. Giglio* issue in that the City of Columbia had that conviction of Charlene Crouch and did not send it to SLED where it would not show on her rap sheet and did not put it on the —

[Page 46, line 1-2] *THE COURT*: Do you have evidence of that or do you suspect that because it wasn't there?

[3-6] *Defendant Faltas*: Oh, no, no, no. Let's get back to the transcript because in the transcript it said that they go by what SLED has. And SLED is not like God up in the sky. They only get the convictions from the courts.

[7] THE COURT: I agree with that.

[8-9] Defendant Faltas: So long as the court doesn't send the conviction —

[10-11] THE COURT: Or if they sent it and SLED hasn't gotten around to having the personnel to put it on a timely basis.

[12] Defendant Faltas: No, no, no, no, no. That wasn't —

[13-14] THE COURT: I'm just trying to help you out there. I'm sorry.

[15-21] Defendant Faltas: No, no, not helping me out because my theory is that the city knew of Charlene Crouch from before that and I'll tell you why and that's why I want to testify because back when they brought the first harassment charges against me Charlene Crouch was one of the witnesses against me and one of the people they tried to develop. And I have evidence and I can introduce that evidence through my testimony.

[22] THE COURT: What is that evidence?

[23 to Page 47, line 3] Defendant Faltas: It's that at that time Turner, Dana Davis Turner, who was the chief judge of the Columbia's Municipal Court, she pulled Charlene Crouch's conviction record, including [46*47] drugs and other things which - and grand larceny. **And they did not provide it to me in the discovery of this case even before Lupton got involved.**

[4-5] THE COURT: Do you have proof that there was convictions of the drugs?

[6] Defendant Faltas: Absolutely

[7] THE COURT: Now? Do you have written proof?

[8] Defendant Faltas: Absolutely.

[9] THE COURT: Let me see it.

[10] Defendant Faltas: And I also have conviction —

[11-12] THE COURT: Let me see that. Take a deep breath. We'll wait ten seconds or more if you need it.

[13-15] Defendant Faltas: What's more important is the conviction of the grand larceny. But what I'm telling you is that the evidence would give a reasonable inference —

[16] THE COURT: I understand. Please find a written statement.

[17-18] Defendant Faltas: I'm sorry. Let me put the standard on the record as far as I am (inaudible) it so I'm protected on appeal.

[19-20] THE COURT: Dr. Faltas, I'm going to give you a chance to find and show me some written things, okay? [21] (pause)

[22 to page 48, line 2] Ms. Mangum: Your Honor, would you consider taking a slight side step to address. **Teresa Knox is present for the city.** She is the city attorney. She was subpoenaed to be here today. I don't believe Dr. Faltas has given the court any indication about Ms. Knox's [47*48] presence being required for this motion. I wondered if the court would consider allowing her to leave.

[3-16] Defendant Faltas: She is the custodian of the records and I'm about to tell you that this incident was alleged on September 11, 2009. Okay. That an appearance in court on November 17, 2009, when I was allowed to represent myself before all that pro se nonsense happened. So on the record, and there is a transcript which should be in the City of Columbia to return the whole thing to you. The transcript of November 17, 2009, when they gave me the discovery but that discovery did not include Charlene Crouch's criminal record. So, there is enough to at least to a prima facie case that the City of Columbia who is the prosecutor in this case or in the conviction that happened was actively hiding Charlene Crouch's criminal convictions for at least those criminal convictions over which the city had control. There were other criminal convictions over which the city did not have control.

[17-18] THE COURT: These would have been impeachable convictions?

[19] Defendant Faltas: Yes.

[20] THE COURT: What would they be?

[21] Defendant Faltas: The grand larceny and again —

[22-24] THE COURT: That was on the record. I read that. They allowed you all to cover that with her on the stand. That was on the record back then. That is an impeachable offense.

[25 to Page 49, line 1] Defendant Faltas: **Sir, again the issue is not the drunk- [48*49] -eness conviction itself.**

[2] THE COURT: I'm not talking about the drunkenness.

[3-4] Defendant Faltas: You asked me if there were convictions of Charlene Crouch and I'm about to give you, because —

[5-7] THE COURT: All right. Stop talking and look. Okay? While she's looking is the duties of the city attorney in City of Columbia to be the custodian of records?

[8] Ms. Mangum: No, Your Honor.

[9-10] THE COURT: Okay. I don't want to interrupt her looking so I'm not going to address that

[11] (pause)

[12] THE COURT: Yes, ma'am.

[13-15] Defendant Faltas: I did not enter it into evidence but if the court wants to copy those pages. This is a booklet that was (inaudible) in general sessions circuit court and —

[16-18] THE COURT: I'll be glad to look at it and I can make a decision about whether I can consider it. Unlike a jury I can look at stuff —

[19] **Defendant Faltas:** Right. Correct.

[20-21] **THE COURT:** That couldn't affect my decision one way but if it's not admissible I couldn't regard it. I'll be glad to look at it.

[22 to Page 50, line 2] **Defendant Faltas:** But that is what I knew on March 9th 2010. Of course, now I know more and what I'm trying to tell you before I forget is that Charlene Crouch had another General Sessions trial and conviction for sexual battery of a vulnerable adult. Her [49-50] priors did not include the drunk-
enness conviction because the city had not sent it to SLED.

[3] **THE COURT:** **You've made that at least four times already.**

[4-7] **Defendant Faltas:** And that raises the inference of prosecutorial misconduct after discovered which was to hide those convictions so as to give Charlene a better chance of not getting a heavy sentence on her other convictions.

[8-9] **THE COURT:** All right. This is an incident report? Is that correct? What you have provided me was an incident report?

[10] **Defendant Faltas:** there are several incident reports.

[11] **THE COURT:** Okay. Which are normally not admissible.

[12] **Defendant Faltas:** Well, that is the SLED —

[13-15] **THE COURT:** **Let me see the SLED if there's a SLED, that's all I need to look at is the SLED because the rest of it doesn't matter. Let me hold it, sir. Let me look at the SLED.**

[16] **Defendant Faltas:** Just turn the pages.

[17] (pause)

[18-22] **THE COURT:** **I see an arrest from 1989 for contributing to the delinquency of a minor. No conviction. Leaving the scene of an accident, conviction 1991. That is not admissible as an impeaching... Disorderly conduct conviction. That is not admissible to impeach somebody.**

[23 to Page 51, line 5] **Defendant Faltas:** Your Honor, we are not talking — I'm sorry I keep repeating myself but the other thing I wanted to make you aware is that they admitted there was no physical injury and [50-51] there was no offer of physical danger but they claim there was emotional injury. And I would want to testify as a medical doctor that it's not possible for a reasonable physician to prescribe medication for three and a half years for someone pretending to have emotional —

[6-7] **THE COURT:** **There is no evidence that anybody was prescribed anything.**

[8-9] **Defendant Faltas:** Oh, yes. Yes. The transcript. Let's get back the transcript please. Oh, yes.

[10] **THE COURT:** **What medicine are we talking about?**

[11-12] **Defendant Faltas:** We don't know because that was — and that was one of the things —

[13-15] **THE COURT:** **All right. This goes back to catch 22. You either know it or you don't know it. If it's in the transcript, was there something about somebody being on medicine for three years?**

[16] **Defendant Faltas:** Absolutely. I show you.

[17] **THE COURT:** **And do you know what the medicine was?**

[18-23] **Defendant Faltas:** I said I don't because I wasn't allowed to control the defense and the incompetent Lupton did not ask. And I also have judge lee's order that says that this is an issue of competence of counsel. And that's why I needed Lupton to be here so we can ask him why he wouldn't ask such a basic question. May I introduce this, judge?

[24-25] **THE COURT:** **I'll be glad to look at it. I don't know whether I can consider it. Yes.**

[Page 52, line 1] **Defendant Faltas:** Do I need to show it to her?

[2-3] **THE COURT:** It would help. Now, counsel, what's this lady's name who is the city attorney?

[4] **Ms. Mangum:** Your Honor, this is Teresa Knox.

[5-7] **THE COURT:** Okay. Are you going to call Teresa Knox? Tell me what she would say that would be in support of your motion. If not, I'm going to let her go back to work.

[8-9] **Defendant Faltas:** Judge, if somebody can produce the transcript of —

[10-11] **THE COURT:** **She's not the keeper of records. I asked and they said she is not.**

[12-13] **Defendant Faltas:** All right. Then she advised the City of Columbia —

[14-15] **THE COURT:** I don't know. I don't know what her job description is with the City.

[16] **Defendant Faltas:** well, can we ask her?

[17-18] **THE COURT:** **That has nothing to do with this case. You are trying —**

[19-23] **Defendant Faltas:** Yes, it does because I want the transcript of November 17, 2009, when I was given discovery that did not include the knowledge of Charlene Crouch's criminality. **When later I saw a document where Dana Davis Turner pulled Charlene Crouch's criminal record and hid it from me.**

[24] **THE COURT:** And this lady can testify to that?

[25 to Page 53, line 2] **Defendant Faltas:** I don't know what she can testify to [52*53] But she's a reasonable person to ask. She's a reasonable person to ask —

[3] **THE COURT:** Come around. I'm going to swear you in, ma'am.

[4-5] **Ms. Mangum:** And, **Your Honor**, just for your edification, **Ms. Knox was not the city attorney when any of this took place.**

[6-8] **THE COURT:** Okay. In that case we don't need to call her. If she wasn't the city attorney then, how would she know what somebody did at that time?

[9] **Defendant Faltas:** I just need to ask three questions.

[10] **THE COURT:** **What are those three questions?**

[11-12] **Defendant Faltas:** If she was the city attorney in 2018 when the city returned the record to you.

[13] **THE COURT:** Okay.

[14-16] **Defendant Faltas:** If she had authority to advise the Columbia Municipal Court to send the complete record and if she was consulted about whether the City may withhold parts of the record.

[17] **THE COURT:** Come around. [18-19] **Teresa Knox, after being duly sworn by the court, testifies as follow:**

[20-24] **THE COURT:** Would you state your full name, please have a seat and answer those three questions that — (inaudible) expand and allow you to ask additional questions but I'm not going to go too much on a fishing expedition. What is it in thing I'm supposed to be supporting what you are saying, Dr. Faltas?

[25 to Page 54, line 2] **Defendant Faltas:** That you have to read everything [53*54] after the trial and after discovered to me because Judge Lee — Judge, I'm sorry, you are distracting me. Now I have to focus on this witness.

[3-4] **THE COURT:** **Okay. Ask your questions. I'll ask you to state your name?**

[5] **A.** My name is Teresa Knox.

[6-7] **Q.** (by Defendant Faltas) If you remember the question. Were you the City of Columbia attorney in 2018?

[8] **A.** 2018?

[9] **Q.** Yes.

[10] **A.** Yes.

[11] **Q.** Your answer is yes?

[12] **A.** Yes.

[13-14] **Q.** Do you get consulted by the Columbia Municipal Court about various matters?

[15] **A.** No. The judges are separate and apart from our office.

[16-18] **Q.** Is your office I'm sorry. I'm going to another question. Is your office as the city attorney the prosecutor in Columbia's Municipal Court?

[19] **A.** The prosecutors are part of the city attorney's office.

[20] **Q.** Are you the supervisor of those prosecutors?

[21] **A.** I'm the supervisor of every attorney in that office.

[22] **Q.** In (inaudible).

[23] **A.** In the city attorney's office.

[24] **Q.** And that includes the prosecutors in municipal court?

[25] **A.** Yes.

[Page 55, line 1] **Q.** Yes?

[2-4] **A.** Yes. They are city attorneys. We have prosecutors that are not — maybe not within our office sometimes but if they are city attorneys, yes.

[5-6] **Q.** Okay. Who is supposed to give the criminal defendant in municipal court discovery if the case is prosecuted by an employee?

[7-8] **Ms. Mangum:** **Your Honor, I object. This goes outside of the three questions scope.**

[9-10] **THE COURT:** **Say the question again. I might allow it. I said I might allow her to expand it.**

[11-12] **Q.** (by Defendant Faltas) I was asking who is responsible for giving a criminal defendant discovery.

[13] **THE COURT:** **I think that's a fair question.**

[14] **A.** It depends on the discovery request.

[15-19] **Q.** (by Defendant Faltas) If somebody is a criminal defendant in Columbia Municipal Court and the case is prosecuted — let me digress for a second. Do you have of your own knowledge do you know that David Fernandez was at one time an assistant City of Columbia attorney?

[20] **A.** No, that would have been before my time.

[21] **Q.** Okay. But do you have no knowledge of that fact?

[22] **A.** I know his name. I do not know him or he did not work for me.

[23-25] **Q.** What happens when an assistant city attorney leaves and another is part of the Columbia Municipal Court prosecution? Does a new lawyer take over?

[Page 56, line 1] **A.** Sure.

[2] Q. And becomes the custodian of the records of that case?

[3-4] A. They would be the custodians of our records of the case, not the court records of the case.

[5-7] Q. Do your records include transcripts that were prepared by the Columbia Municipal Court for a case that was prosecuted by your office in Columbia Municipal Court?

[8] A. they could.

[9-11] Q. And in those cases would your office be also responsible for giving the defendant discovery if asked for under *Brady* and under Rule 5 and/or under Rule 5?

[12-13] A. Our office would be responsible for handing over any discovery that the defendant was entitled to.

[14] Q. Do you have of your own knowledge —

[15-18] THE COURT: I have it on a timer. **I'm going to give you a couple more questions because you are going into an area— she's already said she's not the custodian of the record and she wasn't in that capacity at the time that you are alleging.**

[19-22] Q. (by Defendant Faltas) Do you know or do you have subordinates who can find out if you had the transcript for November 17th 2009, as it relates to this case, *City of Columbia versus Marie Assa'ad-Faltas*, on a courtesy summons for simple assault?

[23-25] A. I have no direct knowledge of any evidence in your file. Now we've got the chief prosecutor here. She would be your best person to answer any questions about the evidence in your file.

[Page 57, line 1] Q. And she has custody over those files?

[2] A. She would have custody of her file. Not the court's file.

[3] Q. I understand, but she would —

[4-8] THE COURT: **I'm failing to see the relevance here. I'll give you two more questions unless you get something that might have some ... I don't want any legal argument about it. I'll give you a couple more questions. I don't see any relevance where you are going here.**

[9] Defendant Faltas: Judge, (inaudible)

[10-11] THE COURT: I said I don't want any more argument. I need a couple more questions.

[12] Defendant Faltas: I don't have more questions.

[13-14] THE COURT: All right. You may step down and you may be released to go back to your job.

[15] **(witness to the side)**

[16] THE COURT: **Okay. Anything else, Dr. Faltas?**

[17-18] Defendant Faltas: A lot of other things but I mean not from her.

[19-25] THE COURT: What is your other things? I want to see the relevance before I allow just — because, quite frankly, I don't see the purpose of this lady being harassed and asked about something after she answered the question that she was not the custodian. I'm not going to allow you to go on a fishing expedition. If there is something that pertains to this case and if you can show me some evidence that —

[Page 58, lines 1-2] Defendant Faltas: I object to your saying that I harassed. I asked her questions and when she said —

[3-4] THE COURT: That's fine. I'll note your objection. Now, move on. What other evidence do you have?

[5-7] Defendant Faltas: I was in the middle of trying to get the transcript to show you that the woman said that she was still on medication.

[8-9] THE COURT: Do you have the transcript? Do you know what page it's on?

[10] Defendant Faltas: Not off the top of my head. (inaudible)

[11-12] THE COURT: Okay. What else after that because I want to get to the point where we are done or you can point out stuff.

[13-14] Defendant Faltas: I'm sorry. You want to get to the point what?

[15-20] THE COURT: Where you are done or you can point out stuff that needs to be addressed. Okay? If you would, when you get a chance, tell me whether or not she was on medicine that caused her to lie. You are trying to impeach her. You said she lied. In your thing you said you had two people, you had evidence that people committed perjury. What's the medicine?

[21-25] Defendant Faltas: I'm not saying that her blurting out that she's on medication caused her to lie. I'm saying that this is objectively verifiable that she is a lie and said she was on medication when she wasn't or she was on medication that affected her competence to testify.

[Page 59, line 1] THE COURT: **Which was it then?**

[2] Defendant Faltas: I don't know because —

[3-5] THE COURT: **And that's my point. You want to do a fishing expedition to see if one thing or the other but you don't know the answer to either one.**

[6] Defendant Faltas: **That's why people take evidence.**

[7-10] THE COURT: **No. No, no. Not for the motion for a new trial, ma'am, okay? Now if you have something that seems to be germane I will allow you to testify or call a witness. If not, I'm getting ready to rule.**

[11] **Defendant Faltas:** Could I find —

[12-19] **THE COURT:** I'll give you five minutes. We'll take a break and you get five minutes, you can use your counsel, anybody else you want. Okay? Now you just answered a question that I suspected all along that you didn't know whether or not she was on medicine and therefore was incompetent or she lied and said she wasn't. You don't know. You want to call people in hopes that you can prove stuff. But the grounds you have the burden of proving and I have no evidence yet —

[20] **Defendant Faltas:** But these two possibilities —

[21-22] **THE COURT:** We are not dealing with possibilities. You have a motion, you have the burden of proof.

[23-25] **Defendant Faltas:** **Sir, it's either of the two. And these are the only two plausible possibilities and both of them support my motion. I just cannot testify for someone else. I'm telling you —**

[Page 60, lines 1-7] **THE COURT:** And I agree with you. So, that's why I don't know whether you need to testify or not. You are basing your legal argument on what the other people might say and there's nobody here that you've called that can say anything that supports your record. Much the same as if the state summonses a witness and they don't show up for trial. I can't make the witness show up. Okay? Understand that.

[8-11] **Defendant Faltas:** **No, sir.** I'm sorry. **The 6th Amendment to the U.S. Constitution guarantees a criminal defendant the right to *compulsory process*, compulsory, not voluntarily, not invitational.** You are trying —

[12] **THE COURT:** This is a motion. This is not your trial.

[13-14] **Defendant Faltas:** **It has the same constitutional guarantees —**

[15-16] **THE COURT:** Go on. You can argue that on your appeal if I rule against you.

[17-18] **Defendant Faltas:** **Of course you are going to rule against me. It was obvious from the beginning.**

[19 to page 61, line 1] **THE COURT:** Ma'am, you say one other disrespectful thing to this court I am going to hold you in contempt. And you know I will because I've done it before. I don't want to do it. It's a last resort. Do not push. Your disrespect for people and the system is obvious and I think if we put these people under oath that you've brought in here today, none of whom you've called by the way, if they were asked they'd agree. Now you may be respectful or you may stand down and [60*61] I'll rule with what I have at this time.

[2-5] **Ms. Mangum:** Your Honor, if you will, would you allow us to put a couple of things on the record I would appreciate that. (inaudible) I just want to be sure the record is clear in terms of the City's position.

[6-8] **THE COURT:** I want her to be able to pay attention to what you are putting on the record so I'm not going to let you say that now while she's looking through. That would not be fair to her.

[9 to Page 62, line 2] **Defendant Faltas:** Page twenty-nine. It starts page twenty-eight at the bottom. *"So, you didn't have"* — that's Mr. Lupton asking Steele, page twenty-eight, line twenty-four. *"So, you didn't have a nervous breakdown by this event?"* Line twenty-five, Steele answering, *"I would say it was partly, yeah, I would say yes."* *"You had it because of this?"* That's Lupton asking on line one, page twenty-nine. Yes. Line two Steele answered, *"Yes. I was assaulted my man."* *"And you talk about you are still on medication from it?"* Steele, yes. I'm sorry. So what she blurted out would be (inaudible). I'm sorry. Page twenty-eight, line six, Mr. Lupton asking Steele, *"So, what you said was she came over here and harassed me and pushed me."* Line eight, Steele answers, here. Line nine, Lupton, *"And in that recording you didn't say anything about being injured or hurt, correct?"* Lines eleven through thirteen, Steele answers, *"No, I wasn't. No, I was not. I didn't have any marks on me. I ended up with no bruises except like I said I ended up having a nervous breakdown; but I wasn't cut."* Question, *"You are not saying that that nervous breakdown was solely related, was caused [61*62] by this, are you?"* Line sixteen, *"I would say collectively because that was the last straw."* And I'm sorry I think she said it before that.

[3-5] **THE COURT:** I've got a question. Was the charge this time simple assault under the old statute or was it just assault and battery, third.

[6] **Defendant Faltas:** City. City ordinance.

[7-8] **Ms. Mangum:** Yes, Your Honor, it was a city ordinance simple assault.

[9] **THE COURT:** Simple assault. Okay.

[10-20] **Defendant Faltas:** Page twenty, line twenty-five. Mr. Lupton was asking Steele, *"And did you have any marks or anything as a result of the"* — and on page twenty-five at the top — I'm sorry, lines one to two. She

interposes, **“No, I did not. Mentally because like I said I ended up having a nervous breakdown over this. I’m still on medication today.”** And line three says “inaudible.” Lines four to seven, **“The Court: ‘Dr. Faltas, please do not make any outburst. Was that you? Hold on for a second. I’m sorry. Let me ask first, I couldn’t see. Was that you that made the noise just now? Dr. Faltas, was that you that made it?’”** And line eight I say, Yes. And line nine the court says, **“Please do not do that.”** So, on page twenty-one — would you like to see it?

[21] THE COURT: I’ve heard it.

[22 to Page 63, line 14] **Defendant Faltas:** So, she volunteers, she volunteers. She interposes the question for Lupton. She volunteers that she’s still on medication. He doesn’t ask her what medication. And then she keeps on referring to the nervous breakdown several times after [62*63] that. And what I’m saying, and I want to be clear that what I’m saying. This is not a fishing expedition. This is only two plausible possibilities. You know either the light was red or green or yellow. It can’t be violet or it can’t be both at the same time. And we get witnesses to say whether the light was yellow or red. So the two possibilities are that she was not on medication and she lied or she was on medication and that medication affected her competence to testify, or which is not mutually exclusive she was on medication because she was living with people with guns and homicidal tendencies and that nervous breakdown if it was true was more likely the result of living with homicidal people than my having injured her (inaudible) which was in response to a piece of paper that she had sent to me herself (inaudible). So, it’s not a fishing expedition and I’m very politely saying —

[15-16] THE COURT: **I’ll note for the record you are being very polite now, yes. You may continue.**

[17-20] **Defendant Faltas:** In *Riddle vs. Ozmint* the state supreme court said either the prosecution had taken the witness to the location or it hadn’t. They said the only two plausible possibilities. If it had (inaudible).

[21] THE COURT: **Do you have that transcript?**

[23] **Defendant Faltas:** Oh, yes, sir.

[23] THE COURT: **If you will pass it over to her.**

[24] **Defendant Faltas:** You don’t want to look at it?

[25] THE COURT: You read it.

[Page 64, line 1-2] **Defendant Faltas:** I don’t know how many times she said that she had a nervous breakdown.

[3] THE COURT: **I understand.**

[4-9] **Defendant Faltas:** Therefore, I think she is here and I need to ask her about which is it, whether she was on medication, what that medication was and who the doctor who prescribed it is or if she wasn’t why did she lie. I think that is very air and I don’t think the court loses much by my asking that question and I think frankly it would be a lot of judicial economy to do that.

[10-11] THE COURT: **Call whatever witness that’s here, the use of the summons.**

[12] **Defendant Faltas:** May I call Dinah Steele?

[13] THE COURT: Yes, ma’am.

[14-18] **Ms. Mangum:** Your Honor, just for the record this over the City’s objection. I think it’s completely improper for the defendant *pro se* to ask these kind of questions to the victim in this case, Your Honor, without at least a finding by the court that this is necessary to determine the matters that are before you.

[19 to Page 65, line 7] THE COURT: All right. Dr. Faltas, she’s raised an objection and I’m not going to *sua sponte* deny you the right to call somebody but she’s raised an objection now and she’s saying that it’s not proper for you to call the victim. Victims have rights in this state as you well know under the law. Are you aware of a medicine that would — I mean let me get back to the point. Tell me what — and I do not agree with your theory, okay? It would not be after discovered because [64*65] you were at your trial. You were conducting part of the cross examination so it’s not something you would have discovered. You were there. You were there at the trial so you knew it at that time. Any issues that could have been raised either were raised or it’s too late. Now I also read quickly the order from the appeal to the circuit court in which the judge there covered the same things that you are raising now. This is not after-discovered evidence. Okay?

[8] **Defendant Faltas:** Could I respond to the objection?

[9] THE COURT: **Yes, absolutely. You have a right to do that.**

[10-11] **Defendant Faltas:** **Okay. Rule 29(b) of the South Carolina rules of criminal procedure is part of the criminal adjudication process.**

[12] THE COURT: Yes.

[13-15] **Defendant Faltas:** All criminal process is subject to the 6th Amendment to the United States Constitution. And it guarantees that I confront one's accuser.

[16-18] **THE COURT:** And you confronted her at the trial. This is a motion hearing, okay? This is a motion hearing. And I have to make a determination whether it's relevant.

[19-20] **Defendant Faltas:** Could I finish my response to the objection?

[21] **THE COURT:** Yes, ma'am.

[22 to Page 65, line 9] **Defendant Faltas:** So, I (inaudible) if you are saying and I'm not sure you are saying it or not saying it that rule 29(b) is cut out from the rules of criminal procedure and not subject to the 6th amendment of the United States. But the 6th amendment includes the [65] right to confront one's accuser, the right to compulsory process and also the right to a speedy trial. This matter has been going on for nine years now, going on the tenth now. But she volunteered to testify. She volunteered that she was still on medication. She is here and I am asking that I examine her. You, of course, can control the questions subject to abuse of discretion. You can control the questions but when it's something that she volunteered emphatically. Several times she said she had the nervous breakdown.

[10-12] **THE COURT:** Do you have any evidence that she did not suffer a nervous breakdown condition or that she did not take medicine?

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

[14] **THE COURT:** What's that evidence?

[15] **Defendant Faltas:** That evidence was the ...

[16-17] **THE COURT:** I'm granting you ten seconds, twenty or thirty, however long you need or minutes if you need it.

[18-21] **Defendant Faltas:** The evidence was the piece of paper that she filled out in December of 2009 and that's also in the transcript. I'm sorry. That transcript is going to be coming back and forth but I am entitled to give you the full answer.

[22] **THE COURT:** Sure.

[23] **Defendant Faltas:** So, could I have the transcript again?

[24-25] **THE COURT:** And what does it say in 2009? She filled out something?

[Page 67, lines 1-3] **Defendant Faltas:** that she filled out a paper saying that she does not have a nervous breakdown and that she does not need a doctor. Could I have the transcript?

[4-14] **Ms. Mangum:** Your Honor, if I may, I believe Dr. Faltas—she references this in the transcript which I think supports the finding that this is not after discovered but she does reference a 2009 document. The testimony from the victim in this case which is in the transcript is that after this event she went to the doctor because of some medical problems. So, whether or not in 2009 she filled out a document it's not relevant, Your Honor, to the testimony that she provided to the court at this trial. Additionally, Your Honor, the fact that it's in the transcript that Dr. Faltas is looking for it today supports the finding that it's not in fact after-discovered evidence. She knew about that document prior to the trial.

[15-16] **Defendant Faltas:** I am sorry, Your Honor. I was answering your question whether I have evidence —

[17-18] **THE COURT:** You may look. You may look. Continue to look. I'll be glad to see it.

[19-20] **Defendant Faltas:** But she's not and I'm telling you that there are only two plausible —

[21] **THE COURT:** You've told me the plausible thing. Look.

[22-23] **Defendant Faltas:** And that plausible either or is under *Riddle vs. Osmint* (inaudible)

[24-25] **Ms. Mangum:** I believe the discussion starts on page seventy-five of the transcript.

[Pages 68 to 70] **Defendant Faltas:** It actually is on page seventy-four, line nine, Mr. Fernandez says objection. Lines ten to twelve, the court says I let you — *"I tell you what we are going to do. Mr. Lupton has finished his questions. Dr. Faltas, I am going to give you five minutes if there is anything else you want to tell me."* And my answer, and remember I was under affirmation, *"Your Honor, I was falsely arrested on December 2nd, 2009, on false harassment charges where she alleges — Dinah Steele alleges she is the victim and also Teresa Ingram alleges she is the victim. Between December 2nd, 2009, and when she claims January 10th she developed a nervous breakdown, I was not in my apartment at all. And, in fact, in a hearing on January 7, 2010, in Sumter before the honorable judge James, Heather Weiss who was prosecuting the case said Ms. Steele is not here because she has had some difficulties. And Judge James, and there is a transcript, and Judge James said with whom. She said — Heather Weiss said she just has stress."* Then on lines twenty-four to twenty-five on page seventy-four Mr. Fernandez, *"I just have objection to this evidence*

and hearsay." The court it's a standing — page seventy-five, line twenty-two, the court, in standing objection. I understand both relevance and hearsay. All right, fine. Then I continue testifying lines ten to eleven. *"All right, fine. But she said she had stress from me from December 2nd to January 10th when she claimed she saw a doctor. I wasn't even there. I was under a bond not to go to my apartment. In addition, when I tried to inspect the evidence after— first I absolutely wanted both cases to be tried together. It was Heather Weiss and that's the [68*69] record, public record self-authenticating. She made the motion that the case against the defendant Teresa Ingram would go forward. I defended myself pro se. The jury deadlocked and after that both cases were dismissed."* But I ... Lines twelve to fifteen, *"Let me stop you one second, Dr. Faltas. I'm going to let you have your last three minutes; but I would encourage you that if you've got anything that's relevant to this date that you might want to include that in your last three minutes."* And line sixteen I say, *"It's relevant to the lies, Your Honor."* Line seventeen to nineteen the court says, *"Well, it's your choice, I just wanted to make sure you had that understanding that I'm looking for relevant testimony. Please go forward."* Page seventy-five, line twenty, I was testifying; and I responded to what she falsely said. *"So, I wasn't given for discovery. But then when the case was remanded here, I came here on November 10, 2010, and looked at what they called the two banker's boxes and in them — and they may still be upstairs and I implore Your Honor to have them brought down because there is a sheet that's called victim sheet"* and they have an inaudible and going to page seventy-six *"And signed by Dinah Steele sometime in December 2009, after I was arrested. There is a question. Do you have psychological effect? She said no. Have you seen a doctor? She says no. So, there is a document that I saw with my eyes and it may still be upstairs. She sat here and then she said I'm taking medication until today. I would like to read in November 2009, that she tried to get a temporary restraining order against me so I don't drive my own car in my parking lot. And I want to read it. And at that [69*70] time she was pretending to be called Ms. Mason and, of course, she's not."* And that Mr. Fernandez, lines ten to eleven, says, *"Your Honor, I just point out that this is after this occurrence."* So, what I'm saying is I with my own eyes saw a sheet that Dinah Steele filled out in December 2009, when she denied having psychological effects. She denied going to the doctor and she denied — I think she denied needing a doctor as well. If we had that sheet with us which is really in the banker's boxes with the city attorney. So, that was in answer to your question whether I have evidence that she did not go to a doctor and my answer is yes, I have evidence. That piece of paper that she signed and that is in the possession of the Prosecution. So, I think at a minimum I'm entitled to call her to the stand and ask her if she did sign that document in December 2009, whether it was true what happened if she did actually change that. I think I'm entitled to that. And, judge, remember that courts are first and foremost temples of truth. If there is a possibility that someone lied to the court, the court itself more than I should be racing to get to the bottom of what the truth is so as to vindicate the public interest (inaudible).

[19] THE COURT: Counsel.

[20 to Page 71, line 10] *Ms. Mangum:* Your Honor, unless I am missing something the testimony that was just read to the court is clear evidence that Dr. Faltas knew of the existence of some piece of paper before the trial. If she had questions or concerns; she certainly had an ability to investigate. What's before you today is a motion for after-discovered evidence and there's just simply nothing here. There is not [70*71] even a cursory meaning of that, Your Honor, in terms of the after-discovered evidence that Dinah Steele somehow I suppose perjured herself is what Dr. Faltas is attempting to say although, Your Honor, I will point out that what it sounds to me is that really it's a credibility of the witnesses argument. The victim was on the stand in front of the judge testifying at a certain point she had a medical breakdown. The court heard that testimony and it was up to the court to determine the credibility of the witnesses. Again, that's a trial finding. That does not reach any of the issues before the court today in terms of after-discovered evidence.

[11-12] THE COURT: Dr. Faltas, I'll give you a chance to respond to her.

[13 to Page 72, line 18] *Defendant Faltas:* Thank you, Your Honor. And I'm sorry I have to go back to the case I won in the court of appeals because that was precisely and I transcribed my oral argument and they said anything that was given for the first time at trial is not going against the defendant. Unfortunately, the case is not published but it was — I had then, now-retired Judge Ralph King Anderson, Jr., the Court of Appeals Judge Huff and now Justice Beatty. And I prevailed unanimously. And they said how was she supposed to do the investigate — and that case was also the City of Columbia providing what turned out to be a fabricated polaroid. And I think at least now-justice Beatty and now-retired judge Anderson said how was she going to investigate anything if she learned about it the first time

during the trial. So, I went to the trial not knowing that she was [71*72] going to claim mental injury. In fact, even Mr. Lupton because he served a Rule 5 and *Brady* saying give us the physical and mental examinations and they didn't give him anything. So, we went to the trial not knowing that they were going to say mental injury. Then that thing about medication and being still on it to that day, she just blurted it out and I couldn't help myself I guess so I think that I'm entitled to put her on the stand and just again you control the questioning.

[19-17] *Ms. Mangum*: Your Honor, just to be clear the t of Ms. Steele —I was trying to find the page number for the court — the testimony of Ms. Steele in terms of this simple assault charge is that Dr. Faltas physically touched her, put her hands on her. So, I think it's a misrepresentation to this court that Dr. Faltas's conviction for simple assault is based on some sort of mental assault that the victim went through. The testimony is clear. The record is clear. The assault and the subsequent conviction are based on a physical altercation between the victim and Dr. Faltas.

[18-22] *Defendant Faltas*: Actually, no, Your Honor. First of all, **the definition of assault is offer to cause physical injury with present means to do so.** But even without that and I'm sorry that transcript is going to travel back and forth.

[22-23] THE COURT: **It will travel back as many times we need it to find out what I need to make a decision on this. I'll tell you that.**

[24-25] *Defendant Faltas*: The prosecution itself said that injury here is limited to the mental.

[Page 73, line 1] THE COURT: **Is limited to what?**

[2] *Defendant Faltas*: Mental.

[3-4] THE COURT: Do you have a copy of the city ordinance? Is one available?

[24-25] *Ms. Mangum*: I don't have one, Your Honor. I can probably pull it up on my cell phone if you'd like.

[7] THE COURT: that would be nice.

[24-25] *Defendant Faltas*: That would be a time for us to take a break and if I can find a cup of water somewhere?

[10] THE COURT: You need a ten-minute break, Dr. Faltas?

[11-12] *Defendant Faltas*: I need a cup of water with or without a break.

[13-22] THE COURT: Okay. Can you guys help her get some water. We've got bottled water. We'll bring it to you. We'll take a ten-minute break. **You can get that information. Let me say this, okay? You got my attention. I want to know more about this; however, I want to see that statute because if it was — if it's contingent upon her suffering mental distress as part of the statute for the conviction then I'm going to let her testify.** If it's not, then it's not relevant and it certainly wasn't after-discovered. Okay? You can argue when we come back. We'll take a break. I just wanted to let you both know I'm thinking both ways.

[23] *Defendant Faltas*: I still love you. And (inaudible)

[24] THE COURT: I appreciate that. My mama loves me, too.

[25] *Defendant Faltas*: Pardon?

[Page 74, lines 1-2] THE COURT: my mother loves me, too. And she's dead but she still loves me.

[3] *Defendant Faltas*: Oh, don't wish that on me, Judge.

[4] THE COURT: No, 'm not wishing that on you. I'm not...

[5] (recess)

[6] (case resumes)

[7-9] THE COURT: **Where were we? I was going to make a decision — I think you all were looking for a copy of the city ordinance.**
Is that right, counsellor?

[10-11] *Ms. Mangum*: Yes, Your Honor. I'm sorry I cannot get service for some reason.

[12] THE COURT: **Let me read it to you.**

[13] *Ms. Mangum*: Thank you, Judge.

[14 to Page 75, line 11] THE COURT: City ordinance 14-31 reads it shall be unlawful for any person to commit an assault and battery or in any manner whatever to engage in any combat or fight in a private or public place within the corporate limits of the city. And apparently in the trial and I'm reading from the order from the initial appeal that was argued by the defendant, the appellate. The standard for common law assault should be which I think you cited earlier, ma'am, when you were arguing to me about what it was. Let me read it and you tell me if that - I don't want to put words in your mouth—is wrong. Let's see. Common law, *State vs. Sanders*, 1912 case. *State vs. Jones* was actually the case which cited *Sanders* and it says defined as an attempt to offer or commit a violent injury upon the person of [74*75] another, coupled with the present ability to do so. And I believe, Dr. Faltas, that — if I misunderstood what your explanation was that was the definition you argued. Then there was some discussion in the record apparently about whether or not the 2010 law when they gave us our wonderful assault and battery, third, and other assault and battery statutes which in my opinion really confused things in some regards whether that applied and they determined that it did not because there was no retrospective, retroactive — typically speaking things that work against a defendant once a law is passed they can't go back. If it benefits them, they get the benefit of it but they don't get the worse end on it so that's the standard.

[12] **Defendant Faltas:** May I?

[13-15] **THE COURT:** Yes, ma'am. If you need to tell me something, tell me. You went out to get stuff. I forget what it was you were trying to go get but I gave you the chance to do it.

[16-17] **Defendant Faltas:** I went to get water but I also got among other things that actual after-discovered evidence.

[18-19] **THE COURT:** Okay. Present that to me, I'll be glad to look at it.

[20-23] **Defendant Faltas:** Yes, Your Honor. But I just wanted to read what the city prosecutor said that day (inaudible). Or is that the theory — that's the theory under which I was convicted. So whether right or wrong this is what we have.

[24] **THE COURT:** Is this a transcript or something?

[25 to Page 75, line 1] **Defendant Faltas:** Yes, yes. The transcript that I said [75*76] (inaudible) and you said —

[2] **THE COURT:** And that's part of the transcript?

[3-4] **Defendant Faltas:** Yes. Except what I'm trying to locate —

[5] **THE COURT:** Okay. I would assume that's their argument?

[6] **Defendant Faltas:** Yes. And ...

[7-8] **THE COURT:** I have not read that; so, I'll give you the chance to find that.

[19 to Page 76, line 2] **Defendant Faltas:** Just because I have it. But that's not Mr. Fernandez. Mr. Fernandez on page eighty-six, line nineteen. *"The definition of simple assault and battery does say unlawful violent injury to the person and a lot of counsel's argument — in fact, almost all of it — almost concedes that there may have been a touching and the fact that it wasn't violent means it wasn't criminal. Well, if taken in a vacuum what does violent injury mean? Well, we know what it means because if you read the ABHAN definition which is right below it, they go further and add the additional requirement of infliction of serious bodily injury. I think that's important because in the simple assault and battery they don't have any requirement for bodily injury. A violent injury just means that it's something that is forceful and unwanted. And an injury can be anything from a flick of the wrist to a stabbing in the heart. The ABHAN discusses what is — what counsel is arguing is violent injury. The simple assault simply says it's a generic term, that it can be a wide range of things. Further clarified by later case law in the charges [76*77] that I did present you."* I want to find what he says the injury here is the matter.

[3-5] **THE COURT:** I'll give you a chance to read it silently. **I'm somewhat familiar with the law on assault and battery and the evolution of it for the last forty years.** [6] (pause)

[7 to Page 78, line 2] **Defendant Faltas:** I intercept something about — and that's on page eighty-eight, because that's the sequencing in which it appears in the transcript but in page — and that's not the mental injury but that's — eighty-eight, line fourteen continuing and that's the city prosecutor speaking. *"So, I would say if we are weighing the credibility of the witnesses, Charlene Crouch and Dinah Steele have endured, as counsel even conceded, have endured much difficulties in dealing with Marie Faltas. The fact that they are here today and came forward and saw these cases through to their conclusion certainly speaks to their character. Dinah Steele for whatever you want to argue, whatever counsel wants to argue about whatever motivations or changing in the story, we have an independent witness who has no dog in the fight, who apparently was — even the defendant testified was on good terms with her, speaking terms."* So, he is speaking about Charlene Crouch pretending that she has no dog in the fight and is independent. And on page eighty-nine and that's still the Prosecution speaking, *"Being unwantingly touched and mental as a result of it. I think it is absolutely appropriate for a guilty verdict. Thank you, Your Honor."* So, page eighty-nine, lines nine to eleven the [77*78] Prosecution basis it on the mental injury, on the pretended mental injury.

[3-4] **THE COURT:** And you want to ask Ms. Steele about if she had mental issues or was she under medicine when this started?

[5] **Defendant Faltas:** Exactly.

[6-15] **THE COURT:** You are aware that sometimes — and I don't know what the thing is — sometimes there are things that don't start — for example, I have friends who like me served overseas, saw things that human beings ought not to see, suppressed them for years and one little thing causes them to break down. Our pastor of our church a few years ago, something happened in Vietnam, same time I served, it never presented itself so I don't know, but 'll allow you — I'm going to allow her to be called and you can ask her those questions. I'm going to limit it. If it doesn't go in a direction that I think it needs to go any further I'm going to cut it off because on relevance.

[16-18] **Defendant Faltas:** And I do recognize that the conduct of cross examination is subject to the sound discretion of the trial judge subject —

[19-20] THE COURT: I am going to allow you to lead her a little bit, ma'am.

[21-22] Defendant Faltas: Thank you, sir. Thank you, sir. May I call --

[23-24] THE COURT: The Court calls Dinah Gail Steele. Is that correct, ma'am? If you'll please some around.

[25 to Page 79, line 1] Dinah Gail Steele, after being duly sworn by the court, [78-79] testifies as follows:

[2-7] THE COURT: If you'll come around and have a seat, please, and answer the questions that she asks you and we are going to try -- now I understand this is both sides. We are kind of vague here on where I am going to cut you off but 'll cut you off and explain at that time and get you to rephrase if I need. Counsel, if you need to object, you can object. All right, Dr. Faltas.

[8-10] Defendant Faltas: Let me preface, Your Honor, that this is my one shot so there are questions that maybe I would want to proffer the answer so that we have a complete record.

[11-12] THE COURT: I'll go step by step. I'm going to give you carte blanche, Dr. Faltas. I want to retire by 2022. We've got to move along.

[13-14] Direct examination by Defendant Faltas:

[15] Q. Ma'am, you have been sworn.

[16] A. Yes.

[17] Q. What is your name?

[18] A. Dinah Steele Mason.

[19] Q. When did you change to Dinah --

[20-22] THE COURT: All right. That's not relevant to this. You can go about answering that paper, filling out that paper, when she filled it out and the answers and that kind of stuff.

[23] Defendant Faltas: Okay

[24-25] Q. (by Defendant Faltas) Do you recall that in December, 2009, you filled out a victim sheet for the 5th circuit solicitor's office?

[Page 80, line 1] A. No, I don't remember filling it out.

[2-3] Q. Do you recall that I was arrested on December 2nd, 2009, for two counts of harassment in the first degree?

[4] A. I remember the harassment case.

[5-6] Q. Do you recall that you were at that time claiming to be a victim?

[7] A. I was a victim of harassment by you. Yes.

[8-11] THE COURT: All right. Again, go back to the issue about -- you asked her about the paper, she answered that way. I'll give you some leeway as far as the mental stress that she had testified at the trial. You can go into that area.

[12-15] Q. (by Defendant Faltas) Were you ever interviewed or in any way questioned by the solicitor's office or by the City of Columbia or by anyone associated with the prosecution of the harassment case whether you suffered mental injury?

[16-17] A. I was on medication after the assault, your assault against me, where you struck me in the chest.

[18-19] Defendant Faltas: Judge, may I say something, please? If she's going to freelance I would reserve to cross examine on that.

[20 to Page 81, line 2] THE COURT: I've already told you I would give you leeway to lead. That's cross examination. Under our rules, when you have adverse witnesses it used to be you had to get the court's permission to ask that. You don't have that any more. I would say that she would be a hostile witness to you. You have the right to cross examine. However, it's still going to be subject to the lines that are [80-81] relevant and germane to your purported motion and that and only that. Okay?

[3-4] Defendant Faltas: I'm saying if she goes to side things, I need to cross examine on that.

[5-6] THE COURT: I just said you could cross examine. Dr. Faltas, you are not hearing.

[7] Defendant Faltas: Okay.

[8-9] Q. (by Defendant Faltas) I'm sorry. Did you just say that I struck you?

[10] A. Yes.

[11] Q. Okay. All right.

[12] Defendant Faltas: With the court's permission --

[13-14] THE COURT: All right. Now I'm not going to retry the facts of the facts, okay?

[15-16] Defendant Faltas: I need to -- she volunteered right now. May I ask --

[17-20] THE COURT: Dr. Faltas, that's not after-discovered. Whether or not you allegedly assaulted her or not, you knew of the allegation in 2009. That's not after-discovered on the case; so, it's not relevant.

[21-22] Defendant Faltas: In 2009 it didn't say struck and now she's saying struck and I want to --

[23] THE COURT: Dr. Faltas, I've already ruled.

[24] Defendant Faltas: All right.

[25 to Page 82, line 2] **THE COURT:** You are who a stickler for rules know that [81*82] once the court has ruled you can't keep arguing that point. Now, move on.

[1] **Defendant Faltas:** Okay.

[4-5] **Q.** (by Defendant Faltas) do you recall that you testified on April 25, 2013, in the trial of that assault?

[6] **A.** I testified in the assault trial, yes.

[7] **Q.** Do you recall that on page —

[8-12] **THE COURT:** Now the proper way is to ask her the question and if she says something different than that, then you show I and give her a chance to refresh her memory and then you can go from there. She doesn't have that in front of her. She can't address that.

[13-14] **Q.** (by Defendant Faltas) do you recall that in that trial you volunteered this sentence, I'm still on medication today?

[15] **A.** Yes.

[16] **Q.** What medication were you on when you testified?

[17] **A.** Paxil.

[18-19] **Q.** Is that an over the counter — I know the answer but I want it from the witness.

[20] **A.** It's a prescription.

[21] **Q.** Who prescribed it?

[22] **A.** I'm not going to give her name.

[23] **THE COURT:** **Yeah. I'm not going to make her.**

[24] **Defendant Faltas:** **No, Your Honor. I'm sorry.**

[25] **THE COURT:** **I fail to see the relevance of it.**

[Page 83, line 1] **Defendant Faltas:** Let me put objection, please.

[2] **THE COURT:** I'll note it.

[3] **Q.** (by Defendant Faltas) Why were you prescribed Paxil?

[4-6] **A.** Because I had a nervous breakdown because of you, because you assaulted me and then continued to harass me for years. I have been harassed for years, lady.

[7] **THE COURT:** **All right. Take a deep breath.**

[8-9] **Q.** (by Defendant Faltas) Did a jury ever come back and say Dr. Marie Assa'ad-Faltas harassed Dinah Steele or Dinah Steele Mason?

[10] **A.** No, they did not. They had a hung jury on your harassment.

[11-12] **THE COURT:** **Don't go to the harassment. We are talking about the assault. Relevance.**

[13-14] **Q.** (by Defendant Faltas) so did you go to a doctor and say I have a nervous breakdown?

[15] **A.** I went to the emergency room, yes.

[16] **Q.** When did you go to the —

[17] **A.** I don't remember the exact date. It was after the assault.

[18] **Ms. Mangum:** I'm sorry, I just have to object.

[19-21] **THE COURT:** Yes, so do I. If you've got a point you want to make, tell me the point and then I'll let you ask or I'm going to just -- no. I mean I don't see the relevance yet.

[22-23] **Q.** (by Defendant Faltas) did they prescribe Paxil in the emergency room?

[24] **A.** Yeah, I believe they did, yeah.

[25 to Page 84, line 3] **Ms. Mangum:** Your Honor, if I might just be heard on my [83*84] objection. Your honor, this case has gone all the way up to the United States Supreme Court and back. This is a victim sitting in this court who is being victimized again by having to go through —

[4-9] **THE COURT:** **And I'm going to try to control what you allege as victimize but I also have the right of a defendant here who is making a motion. It's hard to balance that sometimes. I'm going to give her little leeway but I'm going to cut her off soon unless you make a point that's relevant to your motion for the new trial. We are not rehashing the trial again.**

[10] **Defendant Faltas:** None of this was asked in the trial.

[11-13] **THE COURT:** I don't need any argument. Ask questions and when you run out of questions you can ask that are relevant we will cut it off.

[14] Q. (by Defendant Faltas) Was the emergency room in Columbia or —

[15] THE COURT: That's not relevant.

[16] Defendant Faltas: May I take exception to your ruling?

[17-19] THE COURT: You can. I'll note for the record everything that I don't allow as relevant, you can take exception and I'll note for the record.

[20-21] Q. (by Defendant Faltas) are you aware that the emergency room cannot prescribe mind altering medication for more than three days?

[22-24] A. I don't have any idea of medical jurisdictions or anything like that. After I went to the emergency room, **I went to my primary care doctor and that doctor prescribed the continued use of the Paxil.**

[25] Q. From which date to which date?

[Page 85, lines 1-2] A. **I can't remember the dates.** It was after the assault though. I stayed on it for approximately —

[3-12] THE COURT: Couple more questions, Dr. Faltas. I still don't see where you are going as far as any of your motions. You alleged earlier that this was part of her lying. It was either or. Either she was lying that she was prescribed. **Now the relevance — let me tell you where the relevance falls.** On the record of the assault and I referenced earlier to the appellate court referencing the testimony, it was based on the assault to push. It was not even though **the prosecutor, and I'll note, argued mental and physical, the statute didn't say anything about mental. It said physical.** Okay. I have to confine you to that, ma'am. I'm sorry.

[13-14] Defendant Faltas: Judge, she testified from the witness stand now —

[15-17] THE COURT: **I just told you what I'm limiting you to, ma' am.** I don't need to tell you three times. I'll note your objection for the record.

[18-19] Q. (by Defendant Faltas) when did you stop taking — **did you ever stop taking Paxil?**

[20-21] A. I am not on Paxil right now. I'm getting ready to probably have to go back on it again because of you.

[22] Q. Do you remember when you stopped taking Paxil?

[23-24] THE COURT: All right. That's not relevant. **One more question that *might* be irrelevant, I'm cutting you off.**

[25] Defendant Faltas: Judge —

[Page 86, lines 1-5] THE COURT: If you want to ask her if she was taking it when she was at the trial, that's okay. That would be relevant but just open ended when you stopped, it's been ten years. I've got to confine you to what's relevant. I'll give you ten seconds or fifteen or twenty if you need it. I don't want to push you but...

[6-7] Q. (by Defendant Faltas) was it ever explained to you that Paxil is an antidepressant?

[8] A. I'm not a physician.

[9-10] Q. I'm asking was it ever explained to you that Paxil is an antidepressant.

[11-14] A. I believe **the only thing the doctor explained to me was that it would help with the non-stop crying that I was experiencing during the days. I couldn't sleep at night.** It was just non-stop stress that felt and that it would relieve that.

[15] Q. You had not stopped crying?

[16-18] THE COURT: All right. I told you — she answered that. **I didn't find that as being relevant to your motion. I don't find that question to be relevant to your motion.**

[19-20] Q. (by Defendant Faltas) and you said you could not sleep at night. Once you started taking the Paxil, did you stop crying?

[21] A. Yes, it helped immensely.

[22] Q. So why did you continue to take it?

[23-24] THE COURT: I don't see the relevance to that. Okay? Do you have any questions for her, counsellor?

[25] Ms. Mangum: No, Your Honor.

[Page 87, lines 1-3] THE COURT: All right. You may step down. I'm sorry. **We are not here for a medical discussion about the adverse or inverse effects of Paxil.** Okay? [4] (witness to the side)

[5] THE COURT: Now do you have anything else?

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

[7] **THE COURT:** What is it?

[8-9] **Defendant Faltas:** I need to (inaudible) with the motion and I need to call Charlene Crouch.

[10] **THE COURT:** Is Charlene Crouch here?

[11] **Defendant Faltas:** She was outside.

[12-13] **THE COURT:** Bring her in. If she's here, she's under summons. Absolutely. Ms. Crouch, come around.

[14-15] **Charlene Crouch, after being duly sworn by the court, testifies as follows:**

[23-24] **THE COURT:** All right. Come around and have a seat. State your full name for the record and please answer any questions that these folks have for you. **Dr. Faltas, same I'm allowing you to cross examine her as if she's a hostile witness because I'm assuming that she would since she testified against you at trial. Confine it to the purposes of this motion.**

[22] **A.** My name is Charlene Crouch.

[23-24] **Direct examination by Defendant Faltas:**

[25] **Q.** Is it now Charlene Boyd?

[Page 88, line 1] **A.** No, it's not.

[2] **Q.** Do you have a FaceBook page under Charlene Boyd?

[3-4] **Ms. Mangum:** Your Honor, objection as to relevance whether or not she's —

[5-6] **THE COURT:** Tell me the relevance of that. It may be. I don't know yet.

[7] **Defendant Faltas:** Your Honor, if we can't even —

[8-9] **THE COURT:** I asked you what's the relevance. Just tell me. I might allow it. You are assuming I'm not going to allow it.

[10-11] **Defendant Faltas:** Your Honor, I think the credibility is a (inaudible) thing.

[12-13] **THE COURT:** I understand that. What is the relevance of your asking her about a FaceBook page?

[14] **Defendant Faltas:** That it has her name as Charlene Boyd.

[15] **THE COURT:** I'll allow it. Ask her.

[16-17] **Q.** (by Defendant Faltas) Do you have a FaceBook page that says Charlene Boyd?

[18] **A.** Yes, I do.

[19-20] **Q.** So, when I asked you did you ever go by the name of Charlene Boyd and you said no, you weren't telling the truth, were you?

[21] **A.** I'm married now.

Defendant Faltas: Judge, I think. You remember I asked her if she ever went by Charlene Boyd and she said no. And now she admitted that she does go by —

[25] **THE COURT:** I heard the testimony. Go on.

[Page 89, line 1] **Defendant Faltas:** All right. Thank you.

[2] **Q.** (by Defendant Faltas) Were you ever a tenant at 300 Byron Road?

[3] **A.** Yes, I was.

[4] **Q.** And did you leave there to go to 337 Byron Road?

[5] **A.** Yes, I did.

[6] **Q.** And is that where you live now?

[7] **A.** Yes, it is.

[8] **Q.** And that is not owned by Dinah Steele, is it?

[9] **A.** No, it's not.

[10-11] **Q.** But 300 and 304 Byron Road were and are owned by Dinah Steele, correct?

[12] **A.** Yes, it is.

[13-14] **Q.** And sometime in early 2010 you either vacated or were evicted from that apartment that you had in 300 Byron Road, is that correct?

[15] **A.** I left on my own. I wasn't evicted.

[16] **Q.** Do you recall what month?

[17] **A.** No, I don't. That was a long time ago.

[18] **Q.** Do you recall if you were current on your rent at that time?

[19] **A.** Yes, was. I paid my rent all the time.

[20-21] **Q.** You've had other eviction cases for non-payment of rent after that?

[22] **Ms. Mangum:** Your Honor, objection.

[23] **THE COURT:** Sustained. I don't see the relevance of other.

[24-25] **Q.** (by Defendant Faltas) Did you ever get money from a man called Charles Randolph White for any reason?

[Page 90, line 1] **A.** I do clean up for him. I was his neighbor for years.

[2] Q. Did you ever have sex with him?

[3] *Ms. Mangum*: Objection, Your Honor.

[4] THE COURT: What's the relevance?

[5-7] *Defendant Faltas*: The relevance is that she needed to overrule or bypass the trespassing order to give the prostitution services to Mr. White.

[8-10] THE COURT: Number one, I haven't seen any evidence of a trespass. And the way trespass works I can trespass you today and take it off tomorrow for any reason.

[11-12] *Defendant Faltas*: Well, we'll follow that. We'll follow that.

[13-14] Q. (by Defendant Faltas) So, when was the last time you got money from Mr. White?

[15-17] *Ms. Mangum*: Your Honor, I object as to relevance. I believe Ms. Crouch was purportedly brought here because she lied about her criminal record.

[18-19] *Defendant Faltas*: And I am trying to also put evidence that she has incentive to lie now. The --

[20-24] THE COURT: All right. Let me say this. You made an argument about that she was lying or you or your counsel at the time of the trial. Okay? That's not after-discovered. Your after-discovered was allegedly about her convictions. I'll allow you to ask her about that.

[25] *Defendant Faltas*: Thank you.

[Page 91, LINE 1] THE COURT: Okay.

[2] Q. (by Defendant Faltas) do you recall that on or about April --

[3-4] *Defendant Faltas*: And I think Your Honor has the incident report. If we may show the witness.

[5-9] THE COURT: Sure. Absolutely. He will come get it for you. Now the incident report is not coming into evidence. Okay. There are circumstances where it can come in. It's typically when the side is trying to introduce it to open the door, the other side moves it in, but as a rule it doesn't come in. It's not evidence because it's hearsay.

[10] *Defendant Faltas*: I'm objecting to that ruling.

[11-14] THE COURT: That's fine. You can object to the Supreme Court. They are the ones that set the tenet that you have to be able to have the person there. That's why it's not admissible because the person who made the incident report is not here. Okay.

[15-16] *Defendant Faltas*: And if I may say all the rules of evidence are subject to the ends of justice.

[17] THE COURT: If I may say that I've made my ruling. Move on.

[18] *Defendant Faltas*: You know, I'm just putting --

[19-20] A. I wouldn't be able to see it anyway because I don't have no glasses.

[21] Q. (by Defendant Faltas) are you legally blind?

[22] A. No, but I can't see that well without some glasses.

[24] *Defendant Faltas*: How would the court allow me to handle that?

[25 to Page 92, line 2] Q. (by Defendant Faltas) do you have glasses with some of the [91-92] people who came with you? Do they have your glasses? Do you own glasses?

[3] A. Yes, I do. I have glasses.

[4] Q. Do you have them here?

[5] A. not with - well, outside I do.

[6-7] THE COURT: You can ask her about what's purportedly on that and then have the court look at it. Okay.

[8-9] Q. (by Defendant Faltas) do you recall that on April 22nd, 2012, you were arrested for drunkenness.

[10] A. I see it here but yeah.

[11] Q. So, you can see it.

[12] A. Okay. What's the question?

[13] Q. Do you recall it?

[14] A. Yes.

[15-16] Q. And do you recall that in May 2012 you pled guilty to that charge?

[17] A. Yes.

[18-20] Q. And do you recall, out of your own personal knowledge, that you were given a trespass notice to not go to the 300 and 304 property, 300 and 304 Byron Road, Columbia, South Carolina, 29209, property?

[21-23] A. Dinah Steele didn't issue me no trespassing report. Charlie white did, not Dinah Steele. And then he broke it the next day. He called and cancelled it.

[24] Q. To your knowledge Dinah Steele could have issued a trespass --

[25] A. She didn't. Charles white issued it.

[Page 93, line 1] THE COURT: That's been asked and answered.

[2] Q. (by Defendant Faltas) Then my question is the landlord could --

[3-4] THE COURT: All right. What's the relevance of that as to your motion?

[5] Defendant Faltas: The same thing, Your Honor.

[6] THE COURT: You are talking about credibility?

[7] Defendant Faltas: No, 'm talking about the motive.

[8-9] THE COURT: All right. Motive was argued at the trial. This is after-discovered evidence.

[10-12] Defendant Faltas: **It was not argued, sir. May I just put on the record that it was not argued at the trial because we did not have the evidence.**

[13-15] THE COURT: And, ma'am, I remind you again that if the only thing you have is that it is merely cumulative or impeaching it's not enough to meet the criteria.

[16-17] Defendant Faltas: **But it's not merely cumulative or impeaching.**

[18] THE COURT: Okay.

[19-21] Defendant Faltas: **It goes to the heart and I think I may have my oral argument before the court of appeals. When it goes to the heart of the testimony then --**

[22-23] THE COURT: Then you can make that argument at the Court of Appeals. Stick to what 've stuck it to here, please.

[24] Defendant Faltas: Okay,

[25 to Page 94, line 2] Q. (by Defendant Faltas) I'm asking you do you recall that Charlie [93-94] White, that you were banging on the windows and could have broken them?

[3] A. No, I didn't bang on his window. I banged on his door.

[4] Q. At what time of the day?

[5] A. I can't remember.

[6] THE COURT: What's the relevance of that?

[7-8] Defendant Faltas: **That if she damaged Dinah Steele's property Dinah Steele could have issued her the trespass.**

[9-11] THE COURT: Could have and did is two different things. **You had Dinah Steele on the stand. You didn't ask her about that.** That's not in evidence.

[12] Defendant Faltas: **You limited me.**

[13-15] THE COURT: You didn't try to ask her. You asked her and she said that Ms. Steele did not. Move on, please. Again, I'm not going to allow you to retry the case.

[16-18] Q. (by defendant Faltas) In the hypothetical if Dinah Steele were to put a trespass notice on you, you could not go to Charlie White's apartment and clean it or do whatever you do for him --

[19-25] THE COURT: All right, let me cut you off right there, okay? Let me tell you what the law is in this state as far as landlord tenant. **If I lease property or sell property or allow somebody to live, they have the ability unless they sign in writing that a certain person can't come in to allow invitees in, even if the owner of the property doesn't like it.** Okay. So, I don't see the relevance. I don't see where that's going and it's not even what the law is. So move on.

[Page 95, line 1] Defendant Faltas: What the law is --

[2-3] THE COURT: We are not talking hypothetical here. I need to see evidence.

[4-5] Defendant Faltas: **Let me finish, Judge, please. What the law is and what her perception of the law is which may have influenced --**

[7-9] THE COURT: Has nothing to do with your motion. The point you made when you told me that you had testimony, now you've got a witness that doesn't say what you want them to say.

[10] Defendant Faltas: Could I continue?

[11-13] THE COURT: Briefly. As long as it's relevant. I'm not going to just allow you to ask questions for the rest of this day, no. Not unless it's relevant. If it's relevant, you can go on.

[14-15] Q. (by Defendant Faltas) Do you recall that on April 25, 2013, you said that the drunkenness charge was still pending?

[16] A. I went to court.

[17] Q. To testify against me, is that correct? Do you recall that?

[18] A. No, I don't recall that.

[19] Q. You don't recall going to court to testify against me?

[20] A. What? On the assault and battery?

[21-22] **Defendant Faltas:** Judge, first it wasn't assault and battery. It was simple assault.

[23] THE COURT: All right. Either way.

[24-25] Q. (by Defendant Faltas) do you recall that you went to court on April 25, 2013, to testify against me?

[Page 96, line 1] A. Yes.

[2-3] Q. And do you recall that before that testimony I presented to the court that the drunkenness charge was still pending?

[4-6] **Ms. Mangum:** Objection, Your Honor. I believe that was done by the prosecution. I didn't see anywhere in the transcript where Ms. Crouch represented that.

[7-8] THE COURT: Does it show somewhere where Ms. Crouch represented that?

[9] **Defendant Faltas:** Yes, sir. She said it to the prosecutor.

[10] THE COURT: When? In the transcript?

[11] **Defendant Faltas:** Absolutely. We'll go back to page six.

[12] THE COURT: Let's to back to page six.

[13-15] **Ms. Mangum:** I'm sorry. I correct: myself. I do see on page six where the prosecutor said she just relayed that it was dismissed. That's what it says. I don't know who she is in that case.

[16-17] THE COURT: Is there anything where Ms. Crouch under oath said that she did not have a conviction?

[18] **Defendant Faltas:** Page seven. Your honor

[19] THE COURT: I'll be glad to look at it if you have it.

[20] **Defendant Faltas:** Yes, yes.

[21-22] THE COURT: Well, then hand it to Mr. Truluck, let him bring it up to me and let me look at it. [23] (pause)

[25] THE COURT: I don't see anything on page seven that Ms. Crouch says.

[Page 97, lines 1-2] **Defendant Faltas:** She says it to Mr. Fernandez and Fernandez says it to the court.

[3] THE COURT: That's not under oath.

[4-5] **Defendant Faltas:** It doesn't matter. It's still a misrepresentation.

[6-7] THE COURT: And where does it say in the transcript that she said that to Mr. Fernandez?

[8] **Defendant Faltas:** Because she says it's still pending.

[9-10] THE COURT: I think he said she doesn't seem to be aware of it.

[11-13] **Defendant Faltas:** **That's the sexual battery.** But the drunkenness she says is still pending. She told him and he said to the court still pending.

[14] THE COURT: Why don't you ask her if she told him that?

[15] **Defendant Faltas:** Okay.

[16] THE COURT: Ask it.

[17] **Defendant Faltas:** Oh. I thought you were waiting for —

[18-19] Q. (by Defendant Faltas) Do you recall Mr. Fernandez asking you whether that charge was still pending?

[20] A. I can't remember, no. I just can't remember.

[21-22] Q. Okay. And do you recall that you also at that time had a charge of sexual battery on a vulnerable adult?

[23] THE COURT: Was there a conviction for that?

[24] **Defendant Faltas:** Yes, absolutely.

[25] THE COURT: Do you have a copy of that?

[Page 98, line 1] **Defendant Faltas:** Of the conviction?

[2] THE COURT: Yes.

[3-4] **Defendant Faltas:** Not only do I have a copy of the conviction, I have a copy of the transcript where she pled guilty.

[5-6] THE COURT: Ask her the question and then she can answer it. When was that conviction?

[7-8] **Defendant Faltas:** The conviction was in July of 2013 but the arrest was previous to 2013.

[9-11] THE COURT: Okay. Well, if the conviction was after your trial, she would not be allowed to answer any questions or be asked about it; so, it wouldn't be admissible.

[12-14] **Defendant Faltas:** **Could I put on the record that she says she has no idea about it and I have evidence that she had idea about it.**

[15-24] THE COURT: What do you mean have an idea about it? Let me explain something to you. Because somebody has convictions, some of them are allowed to impeach them if they are asked and some of them, even though there's

convictions, you are not allowed to impeach them. Certainly, that charge, if it occurred prior to that, would be one that may be allowed to be asked questions about as far as impeachment unless they acknowledge it on direct evidence and then you couldn't ask them. But if she had not been convicted at that time, it's irrelevant that she was convicted later because we are talking about what happened at that trial.

[25] **Defendant Faltas:** She said she had no idea about it.

[Page 99, line 1] **THE COURT:** I understand. I understand.

[2-3] **Defendant Faltas:** But she had an idea because she had been arrested —

[4] **THE COURT:** Now, how do you know what was in her mind?

[5] **Defendant Faltas:** I'll tell you why.

[6-7] **THE COURT:** Okay. Quickly and then I'm going to cut this off, too.

[8-9] **Defendant Faltas:** Judge, could you please notice Mr. Mason —

[10] **THE COURT:** I'm looking at you.

[11] **Defendant Faltas:** The faces he's making at me.

[12-13] **THE COURT:** Ma'am, do you have eyes in the back of your head?

[14] **Defendant Faltas:** No.

[15] **THE COURT:** You are looking at me, I'm looking at you.

[16] **Defendant Faltas:** When I turn he still has that face —

[17] **THE COURT:** He's got a smile and that's offensive?

[18-19] **Defendant Faltas:** That's a smirk and that's saying I can beat you because the courts — I'll just -- never mind.

[20-24] **Ms. Mangum:** Your Honor, the record shows that she was — they asked about an assault, second, from June, 2012. Mr. Fernandez says she doesn't seem to be aware of it, Your Honor. And then the court says no reference to the assault, second. There's no mention in this transcript of a sexual battery.

[25 to Page 100, line 2] **Defendant Faltas:** That's the same thing. That's the same [99+100] thing. It was a sexual battery that was tried as an assault second, and we have the record. May I just --

[3-4] **THE COURT:** I don't see the relevance of it because it happened after the fact.

[5-6] **Defendant Faltas:** The relevance is during that day she presented herself as not having the criminal record that she does —

[7] **THE COURT:** She --

[8] **Defendant Faltas:** Wait a minute.

[9-13] **THE COURT:** I've already noted that she represented she did not — there wasn't an adjudication of the other charge and record ends up finds out there was. Okay. For the public drunkenness which you would not have been allowed to ask her anyhow so for the basis of impeachment it's not relevant.

[14-15] **Defendant Faltas:** (inaudible) Now I want to give you also the actual rule 29(b) motion.

[16-17] **THE COURT:** I've got it in front of me. I've got rule 29. I don't want to see a motion that you made in another case.

[18-20] **Defendant Faltas:** No, no, no, no. It's in this case. The one that was sent to the Columbia Municipal Court. You asked me if you have it and I told you that the municipal court --

[21-22] **THE COURT:** Give me what you want. And then move along quickly. I'm about to wrap this lady up, too.

[23-25] **Defendant Faltas:** Yes, sir. All of them have been previously served on the City of Columbia but if opposing counsel wants to look at them it can.

[Page 101, line 5] **THE COURT:** Now, you've submitted me a lot of stuff here that I'm not going to even — I don't care what happened in Lykesland magistrate unless you can point out some relevance to it and an emergency motion in front of the Supreme Court. Where is the rule 29 thing you were telling me about?

[6] **Defendant Faltas:** I'm sorry.

[7-9] **THE COURT:** Where is the rule 29(b) motion you are so proud of you want me to look at that you had submitted in the previous case?

[10-11] **Defendant Faltas:** It's not the previous. It's in this case, the eighteen page.

[12-13] **THE COURT:** Okay. All right. I see that. I don't know where the rest of it is relevant but I'll look at this. Go ahead.

[14-15] **Defendant Faltas:** The rest of it is the sexual battery charge that she said she had no idea about but at that time --

[16-18] **THE COURT:** And I've already told you that it's not relevant to this case because the conviction occurred after the trial.

[19] **Defendant Faltas:** May I proffer the exhibits?

[20] **THE COURT:** Oh, yeah.

[21] **Defendant Faltas:** Yes?

[22-25] **THE COURT:** Oh, yeah. Tell me what it is, each individual thing if you are going to make a proffer. Quickly summarize it. If you can't then I won't take it and I am not going to deny you the right to proffer something for the appellate record if you should lose.

[Page 102, line 1] **Defendant Faltas:** The first exhibit is a January—

[2-3] **THE COURT:** Now let me ask you. Since you are going on to the motions, can we let this lady sit down?

[4] **Defendant Faltas:** I haven't finished.

[5-7] **THE COURT:** Well, then I suggest you finish before you make those motions. You can do that after this. We are not going to piecemeal it.

[8-10] **Defendant Faltas:** Okay. The last thing we were asked about the conviction of the battery. Could I at least ask her a question for the proffer?

[11] **THE COURT:** Sure. I'll give you one question.

[12] **Defendant Faltas:** Okay.

[13-15] **Q.** (by **Defendant Faltas**) Do you recall pleading guilty to either the sexual assault or assault, second degree and battery in June or July 2013?

[16] **A.** Yes I did

[17-18] **Q.** And do you recall that before that you had been arrested for it on or around June 2012?

[19-20] **A.** I got convicted for assault and battery in I think (inaudible) I think.

[21] **Q.** I'm sorry?

[22] **A.** Yes.

[23-24] **Q.** And do you recall that you had a bench warrant for your arrest?

[25] **A.** No, I never had no bench warrant.

[Page 103, lines 1-2] **Q.** Is it fair to say that you were aware of that charge in April 2015?

[3-7] **THE COURT:** All right. **I'm cutting you off. I've already told you this twice. If you push this again you are going to push that potential contempt button.** Don't ask her any more about any conviction that occurred after that. You would not have been able to ask her about it at the trial and it's not relevant here.

[8] **Defendant Faltas:** We'll go to the testimony.

[9-10] **Q.** (by **Defendant Faltas**) Do you recall that in the testimony you said that you called the police?

[11-12] **A.** I think Mr. White called the police. It may have been me or Mr. White. All I know is —

[13-16] **THE COURT:** The question, you have to answer yes or no and then you can explain it. Do you recall? If you do, say yes; if you didn't, say no. You can explain it either way. You've got to answer the question.

[17] **A.** I can't recall who called.

[18-19] **Q.** (by **defendnt Faltas**) Do you recall that you testified that you called the police?

[20] **A.** I can't recall.

[21] **Defendant Faltas:** May I show her?

[22] **THE COURT:** Sure. Absolutely.

[23] **Defendant Faltas:** Thank you.

[24 to Page 104, line 1] **Ms. Mangum:** And, Your Honor, I'm not exactly clear what's happening right now, if we are getting into the potential that [103*104] she has perjured herself if that's what Dr. Faltas is asking.

[2-3] **THE COURT:** I'll give her a little leeway. It's part of her motion. I am going to give her a little leeway.

[4-5] **Ms. Mangum:** Your Honor, she has a right to know her rights as well if we are getting into some sort of —

[6-7] **THE COURT:** **She said she doesn't recall. That's not perfect. If you don't remember, you know.**

[8-10] **Ms. Mangum:** Yes, Your Honor, but the next question is if she said or did something that was on the record and certainly I'll leave that to your discretion but I think ...

[11-12] **Defendant Faltas:** Absolutely. If you want to appoint her a public defender —

[13-18] **THE COURT:** I'm waiting to see what the relevance is before I make any decision. **I'd like to see where it says that she said she called the police and I'd like to see what evidence that you have that decision, what your evidence might be that would show that she didn't call the police?** I assume that's where you are leading.

[19-20] **Defendant Faltas:** The evidence would be the discovery that they gave me and —

[21-23] **THE COURT:** I'm asking you to show me that evidence that proves that she didn't call the police or that she did, whichever way it was.

[24 to Page 105, line 2] **Defendant Faltas:** I'm going — I'm sorry, I'm not complaining, I'm just explaining that I'm going one thing at the time. [104*105] First, I'm finding where she said she called the police. Then I'll find where she didn't call the police and it's also in the motion.

[3-7] THE COURT: I know it's in the motion but just because it's in the motion doesn't mean it's relevant to this. Why would it matter even if she said she called and didn't, how would that go that would probably change the result if a new trial was had. That's one of the things —

[8] Defendant Faltas: Judge —

[9-12] THE COURT: This is the thing that I have to look at for everything you offer. And is it merely impeaching? Okay. You've got to meet both of those criteria and I skipped over the other three because...

[13-14] Defendant Faltas: **I'm sorry. (inaudible) it's the totality of the facts.**

[15-19] THE COURT: You say that and you might argue that at a later time. I'm telling you what the criteria I have to base it on now. **I don't need any more lectures about totality.** I'll look at things in the totality at the conclusion which I hope will be pretty soon because **I'm still waiting for that little bullet.**

[20] Defendant Faltas: I think I'll go faster if ...

[21] (pause)

[21-23] Defendant Faltas: I think I can look at it from the motion itself,

[24-25] THE COURT: Do you want me to read that part of the motion, it's section "A."

[Page 106, line 1] Defendant Faltas: I did make another copy of it.

[2-5] THE COURT: Okay. **The underlying conviction was procured by perjury**, section eight, Charlene Crouch after-discovered perjury — this is your motion. Crouch lied about her conviction record and her having called the police herself.

[6] Defendant Faltas: Yes.

[7-12] THE COURT: In a sworn 17 November 2009, statement to C.P.D.'s investigator, Amanda Blanton, Crouch affirmed that it was Dinah who called police. No police called by Crouch was produced in discovery in any case. After the trial, it was discovered that Crouch — then you start talking things with Charles White which are not relevant to this after-discovered —

[13-15] Defendant Faltas: I want to find on the transcript to where she said I called police. I thought I had it in the motion. Ah, thank God. Page forty-three, lines seven to nine.

[16] THE COURT: Do you want to read it?

[17-20] Defendant Faltas: *"She was, you know, she pushed the papers in her chest and she was just — she was just moving, you know, pushing her back and then, you know, I went inside and I called the police."*

[21] THE COURT: Okay.

[22] Defendant Faltas: This is Charlene Crouch's testimony.

[23-24] Ms. Mangum: And, Your Honor, the transcript said I think I called the police.

[25 to Page 107, line 1] Q. (by Defendant Faltas) Do you recall testifying like that, Ms. [106*107] Crouch?

[2-6] THE COURT: You are going to have to show her the copy of the transcript if you are going to try to impeach her to refresh her memory and if the transcript says she thinks she called I want that noted for the record, too, read it out loud if you can read it. If you can't, I'll read it for you.

[7] A. I can't see that.

[8] THE COURT: What line is it, Dr. Faltas, do you know?

[9] Defendant Faltas: Nine through eleven.

[10-14] THE COURT: Okay. Line six, was *"She moving backwards, was she trying to get away?"* Line seven, *"She was — you know, she pushed the papers in her chest and she was just — she was moving, you know, pushing her back and then, you know, I went inside and I think I called the police."* Okay. **Note that for the record.** Anything further?

[15] Q. (by Defendant Faltas) Do you recall having testified like that?

[16] A. Yes.

[17] Q. Did you call the police in fact?

[18] A. I can't — well, I don't know. I can't recall. It was me or Dinah or Charlie. It was one of the three.

[20-22] Q. Do you recall you were present at the trial when the actual tape was played where Dinah had called the police? It was not you or Charlie?

[23 to Page 108, line 1] THE COURT: all right, let me stop you right here. What's the relevance of who called? She didn't say — she didn't affirm that she did, she said she thought she did. And then now she says she's not [107*108] sure. Where is the perjury? And where is the relevance?

[2-4] Defendant Faltas: The perjury is that a little bit earlier in that transcript she says the law was called and then she says she called and then she says Dinah called.

[5-8] THE COURT: No, she said she thought she called. You keep misrepresenting the thing. All right. A few more questions and I'm going to let her sit down. You've got to the part you made on your motions.

[9-10] Q. (by Defendant Faltas) Did you ever get money from Dinah Steele or from Larry Wayne Mason for any reason whatsoever?

[11] A. No.

[12] Q. You did not sell them a car?

[13-14] THE COURT: And what's the relevance of whether she sold them a car?

[15] Defendant Faltas: I'm just impeaching her on her answer.

[16-22] THE COURT: Well, you might be reminding her of something. What's the relevance about whether getting money ever – I mean I may forget that I got money from somebody. What is the relevance of that? You could ask anybody a bunch of questions and they may not remember and then tell it and then say it one way and then something refreshes, but what's the relevance of the question to start with is what my point is.

[23-24] Defendant Faltas: Because she testified falsely because she for money from them.

[25 to Page 109, line 2] THE COURT: You asked her if she got money from them and [108*109] she said no and then you asked if she sold them a car. Selling them a car and taking money for perjury is two different things.

[3-4] Defendant Faltas: But I didn't ask her if she got money for perjury, I asked her if she ever got money from them –

[5] THE COURT: And she said no. And she said no.

[6] Defendant Faltas: And now I'm trying to impeach her.

[7] THE COURT: That she may have sold a car to them. Okay.

[8] Q. (by Defendant Faltas) did you ever sell a car to them?

[9] A. Yes.

[8-11] Defendant Faltas: Judge, I would just say that a bribe can be hidden.

[12-13] THE COURT: I understand. You've made your point. Anything else before I let her sit down?

[14-15] Q. (by Defendant Faltas) Do you recall how much money you received from them?

[16] A. No.

[17-18] Q. And now that I have refreshed your memory, could you please think if you got money from them for any other reason?

[19] A. No.

[20] Q. No, you are not sure or –

[21-22] A. No, never got any money. I paid her money for my rent but, no, I did sell a car one time to Larry Mason.

[23] Q. Did you ever see me hurt Dinah Steele?

[24-25] THE COURT: All right. **No. It's not relevant to grounds for this motion. We are not retrying the case.**

[Page 110, lines 1-2] Defendant Faltas: May I just for the record object that you need –

[3-5] THE COURT: Objection noted. You tell me the relevance then I'll reconsider but I don't see any relevance. You are trying to retry the case. Okay. I'm not allowing you to do that.

[6-7] Defendant Faltas: **And in part in retrying the case in light of the new evidence is what a Rule 29(b) motion –**

[8-11] THE COURT: Oh, I understand what it is and I keep reading you the guidelines and you say you don't like it because you don't think the Supreme Court (inaudible) ruled that way. **But that's the rules I'm under and that's what I'm bound by.**

[12-13] Defendant Faltas: **I keep on telling you that there are cases that say that new light you take everything –**

[14-15] THE COURT: **An unpublished case which is not considered law.**

[13-16] Defendant Faltas: No, no, no

[17-18] THE COURT: Okay. Anything else for this lady before I let her sit down?

[19] Defendant Faltas: No.

[20-21] THE COURT: All right. You may sit down. Do you have any questions for her?

[22] Ms. Mangum: No, Your Honor.

[23] THE COURT: Okay. I didn't think she did.

[24] (witness to the side)

[25] THE COURT: Anything else before I make my ruling?

[Page 111, line 1] Defendant Faltas: I need to testify.

[2-6] THE COURT: Come around here. Now, I'm going to cut off your testimony if it's not relevant and if you are making assumptions. **I want direct evidence testimony, not assertions that you believe that these folks lied and that money could be handed, could be multiple ways to bribe.** That's not testimony, that's argument. Yes.

[7-12] Ms. Mangum: I'll be glad to stipulate for the purposes of the record on appeal that the arguments that Dr. Faltas made

previously would be considered testimony because she's a pro se defendant today. I don't have any problem stipulating to that so she does not have to get back up on the stand and reiterate everything that she's —

[13-14] THE COURT: **I can swear you in and ask you if what you've asserted is the truth —**

[15-16] **Defendant Faltas:** I affirm myself in but before we forget I need to enter the exhibits.

[17-18] THE COURT: All right. **You tell me the exhibits.** You want to bring them up. Yes, ma'am, you want to leave?

[19] Female: Yes, sir.

[20-21] THE COURT: Bye. Yes, ma'am. Y'all have no reason to keep her.

[9] **Ms. Mangum:** No, Your Honor.

[23] THE COURT: She's free to go.

[24-25] **Defendant Faltas:** No, no. I want them entered. I really don't know how he wants that done. Do you want me to say —

[Page 112, lines 1-6] THE COURT: Hand them to me and I'll read each one. You tell me what the thing is and then we can—I'll say whether I'll allow it in. **The first is a letter to you from Dana Turner asking about a transcript of a parking.** What's the relevance of that? **Oh, this is the drunkenness conviction. Absolutely. This goes in.** Any objection, counsellor?

[7] **Ms. Mangum:** No, Your Honor.

[8-12] THE COURT: Okay. I will stipulate for the record that there is — **we'll put this as plaintiff's number one, allowed in. The court will take judicial notice that the record shows that Charlene Crouch had a violation dated 4-22-2012 and the disposition of the case was guilty and original court date is 5-18-2012.**

[13-14] **Ms. Mangum:** Your Honor, does that contain a disposition date?

[15-18] THE COURT: It doesn't say a disposition date. It just says original court date. There is some reference to 5-18-2012 but I don't know whether that was —

[18-19] **Ms. Mangum:** That would have been a first court date probably, Your Honor, after the ticket was written.

[20-21] THE COURT: Well, let then let me ask you why would attorney for the City of Columbia send a disposition to Dr. Faltas that wasn't correct?

[23] **Ms. Mangum:** I don't quite understand your question.

[24-25] THE COURT: **Well, I mean obviously there was a request for the disposition of Ms. Crouch's record on that charge.**

[Page 113, line 1] **Ms. Mangum:** I don't know that to be true, Your Honor.

[2] **Defendant Faltas:** (inaudible) pled guilty.

[3-6] THE COURT: No, it doesn't. It says guilty. It doesn't say pled guilty. There's nothing about pled in there. It could have been a trial in her absence and she wasn't aware of until 2017. I don't know. **All I know is that is coming in.** Okay. Put that in the record.

[7] **Defendant Faltas:** Over her objection, right?

[8-10] THE COURT: **Of course. I told you I was putting it in. But I'll note your objection for the record, same as I do Dr. Faltas's. Before the Supreme Court, the public index. What is this?**

[11-14] **Defendant Faltas:** It shows that I had mailed by certified letter the motion for after-discovered evidence with the City of Columbia Municipal Court and they basically played dumb about receiving it and I had to go to the —

[15-16] THE COURT: **Oh, that's a different thing. I'm looking at this public index. You are talking about this part right here?**

[17-19] **Defendant Faltas:** Both of them go to prove that that was the motion that was sent to the municipal court and was available at the municipal court.

[20] THE COURT: Okay.

[21-22] **Defendant Faltas:** And the reason that that is important, Your Honor, is that it was made within the one year.

[23 to Page 114, line 11] THE COURT: All right. For the record, your motion for this trial was timely made. Okay. I have seen a motion you made fairly recently in which you suggested that you were denied the [113*114] right to a speedy trial because it's been "x" number of years since that time. The simple truth of the matter is it was delayed all this time because your case was under appeal and it could not be heard until it was adjudicated. You had it scheduled last year. You filed another — which is your right, I'm not faulting you for that. But that's why. Now having said that since you were the one filing these appeals and the three, I guess, whatever it was, to U.S. Supreme Court, you can't then come in and say, hey, I didn't get a fair trial because. And also, you'd have to show that you were damaged by that and there's been no evidence of that. I understand and note your motion and it was timely made which was ...

[12-13] **Defendant Faltas:** And nothing can be lost by entering those exhibits to show that it was timely made.

[14] THE COURT: I'll put it in.

[15] **Defendant Faltas:** Okay. Thank you.

[16-20] THE COURT: This will be part of the record. Okay. There is a motion received February 6, 2014. That was Supreme Court. Now I don't know if I'm going to take that motion. We are stipulating that she timely made a motion. Do y'all have any objection to that as far as a motion for a new trial or do you have some contesting of that?

[21-22] **Ms. Mangum:** I hesitate to stipulate to anything, Your Honor, based on the procedural history of this case.

[23 to Page 115, line 2] **THE COURT:** Well, I am going to rule that it was timely made. I wouldn't have been here this long if I didn't think her motion was timely made. I would have just told her up front. Okay. It's plain [114*115] and simple. I think it was timely made and it can't be held against her because it takes a while for appeals to take place. Okay.

[3-10] **Defendant Faltas:** And just for the record, I have (inaudible) that 29(b) is unconstitutional in the sense that it doesn't allow the motion for after-discovered evidence during the pendency of the appeal and that rule, Federal Rule 33, allows the court, the trial court, to tell the appellate court that it wants everything suspended so it puts it at the trial court. And then the other exhibit is where the City of Columbia did receive the eighteen page, February 2014, motion for after-discovered evidence (inaudible).

[11-14] **THE COURT:** Okay. Until our supreme court, court of appeals or a judge above me rules that it's unconstitutional I have to take it as being constitutional and I so do. Now incident report for an unnamed drunkenness — that's not coming in.

[15] **Defendant Faltas:** Proffered.

[16-24] **THE COURT:** I'm not — you can't proffer it because you don't have the officer who took it. Okay. You understand. Now, I can take judicial notice of certain things; but an incident report is *per se* hearsay. Judicial notice of other things. Now, this other page here has where you sent notice February 4, 2014. I guess that's your motion for the Supreme Court. Okay, that goes with that. Can you staple those together? **Now we have a court of general sessions, Charlene Crouch, assault and battery, second degree. I don't see the relevance of this.**

[25] **Defendant Faltas:** you have asked me about it.

[Page 116, Lines 1-3] **THE COURT:** No, you offered and I told you it wasn't relevant. Okay. **I don't see the relevance of any post trial conviction as far as perjury or that's before this court.**

[4-5] **Defendant Faltas:** I'm sorry, if I need to put that on the record again that she claimed she had no idea about it.

[6] **THE COURT:** And I've already ruled. Okay.

[7-8] **Defendant Faltas:** Can we make that for a proffer, please?

[9-12] **THE COURT:** For proffer. That's fine. We'll put it in the file. All these have got to be stuck together everything that she proffered. Then we have her bond. What's the purpose of the bond papers?

[13] **Defendant Faltas:** Is that Charlene Crouch's?

[14] **THE COURT:** Yes.

[15-16] **Defendant Faltas:** That she was aware of because it took place before my April —

[17-19] **THE COURT:** And again I tell you you would not have been allowed to ask her about a pending charge. So, that's not relevant and that's not coming in.

[20-21] **Defendant Faltas:** And may I just object for the record (inaudible).

[22] **THE COURT:** A different what?

[23-25] **Defendant Faltas:** There is a difference between the witness saying I was aware of it but it cannot come in and the witness saying factually that she's not aware.

[PAGE 117, LINES 1-4] **THE COURT:** **I understand. I've made my ruling. Then you have the case of Carson Walker vs. Charlene Crouch.** Again, they didn't think we've be here this long but we are going to be here as long as it takes.

[5] **Defendant Faltas:** It's after discovered as far as —

[6-12] **THE COURT:** But it could have been discovered reasonably had you tried. Any civil case under public index which I'm well aware you know how to search so, no, that's not relevant. Okay. That occurred in 2008 and 2010 and it's part of the court record and it had to do with something else. And again she couldn't be impeached by something she wasn't convicted of. I tried to tell you that. Okay. All right.

[13-14] **Defendant Faltas:** May I just say it's part of the new picture.

[15-17] **THE COURT:** **Yeah, the part of the picture that is not the law. What you think it may be and what the law is, I have to go with the law.** Okay. Anything else?

[18] **Defendant Faltas:** Yes. My testimony.

[19-20] **THE COURT:** **She just stipulated to everything you said in your things —**

[21-22] **Defendant Faltas:** There would be something else to my testimony and I think —

[23] **THE COURT:** **What else?**

[24] **Defendant Faltas:** That —

[25 to Page 118, line 3] **THE COURT:** What direct evidence do you have on this, on [117*118] any of these things? Give me a quick summation and I'll be glad to let you testify to it. If it's just your argument, legal argument and your theories I've heard it over and over again.

[4] **Defendant Faltas:** No, it's my medical knowledge.

[5] **THE COURT:** **About what?**

[6] **Defendant Faltas:** About Paxil.

[7-8] THE COURT: **It has nothing to do with this motion. Nothing. It's irrelevant.**

[9-10] **Defendant Faltas:** And may I just – I really think it would be cleaner if I testified.

[11-21] THE COURT: The way these things work, ma'am, in motions, often there is no testimony taken. It's the judge's discretion whether he allows testimony. You make a motion and if there is some question about there's evidence you take the testimony. You tell me some testimony on the points you made in your motion that you could offer and it doesn't have to do with Paxil, whether she took Paxil or not. That doesn't mean she couldn't testify at that time. Then I'll let you testify but other than that just to get up there and reassert what you've been saying the whole time which is theory and you haven't had a single witness that supported anything you've said other than the conviction for this lady.

[22-24] **Defendant Faltas:** Judge, I mean you are saying I don't have a single witness to support what I'm saying and I want to be the witness to support what I'm saying.

[25 to Page 119, line 1] THE COURT: **Tell me what it is. Give me a quick summary of [118*119] what you would say and I'll be glad to let you —**

[2-4] **Defendant Faltas:** That I saw with my own eyes that page what she said, what Dinah Steele and now from the witness stand she said she doesn't remember signing that paper.

[5] THE COURT: Okay.

[6] **Defendant Faltas:** But I saw it with my own eyes.

[7-8] THE COURT: **Will you stipulate that she saw a paper with her own eyes?**

[9-10] **Ms. Mangum:** Your Honor, it's in the transcript from this trial that she saw the paper.

[11] THE COURT: **Okay. It's in the record.**

[12-13] **Defendant Faltas:** Well, but then there was something else.

[14] THE COURT: **All right. What is the something else?**

[15-20] **Defendant Faltas:** That when I was looking at those two banker's boxes I asked for a copy of that piece of paper and the City of Columbia would not make me a copy of it. And I also — and this is something that only I have knowledge of it but if you don't credit me I have the voice recording of when I was looking at those two banker's boxes.

[21] THE COURT: **And how did you record that?**

[22] **Defendant Faltas:** Again, it was the City of Columbia.

[23-24] THE COURT: **You said you have the voice. I assume you have a recorded thing right now?**

[25] **Defendant Faltas:** Do I have it on me?

[Page 120, lines 1-4] THE COURT: All right. Let me make my point with this, okay? **Whether or not that she filled out a form that said at that time when she filled out the form she was not in need of any help and whether or not subsequent to that is irrelevant.**

[5-6] **Defendant Faltas:** It's not irrelevant because it was in December of 2009 which is after.

[7-9] THE COURT: **But if she didn't go to the doctor until after she may have signed that form, how is that relevant as far as perjury?**

[10-11] **Defendant Faltas:** She said here on the witness stand and said she didn't sign that paper.

[12] THE COURT: **She said she didn't remember signing it, yes.**

[13-14] **Defendant Faltas:** And I want to testify that I saw it and that I was not allowed to get a copy of it.

[15-18] THE COURT: I will allow you to testify to that. Now, what else do you need? Just those two parts? Again, I'm not going to let you make all these assertions you have been making for the last three hours.

[18-23] **Defendant Faltas:** And I also saw with my own eyes where the City of Columbia, then-Chief Judge Turner, pulled Charlene Crouch's criminal record from SLED and then they did not give it to me and they did not allow me to copy it. So, I'm saying there is enough evidence of prosecutorial misconduct —

[24-25] THE COURT: **But that's not the basis of your motion, ma'am. Again, I'm going about the relevance.**

[Page 121, lines 1-4] **Defendant Faltas:** You rule on the motion as of the state of the record when you hear the motion, *not when the motion was made originally*. I can add things — Rule 15. **I have evidence. It can be amended —**

[5-9] THE COURT: I will allow you to come up here and testify. I will cut you off if you start making legal arguments versus actual testimony. Come around. You can testify from there. Raise your right hand. It records just as good from where you are. Raise your right hand.

[10-11] **Marie-Thérèse Assa'ad-Faltas, after being duly affirmed by the court, testifies as follows:**

[12] THE COURT: **State your full name.**

[13-18] **A.** My name is Marie Assa'ad-Faltas (inaudible). And m a medical doctor. I graduated with honors from Ain Shams University School of Medicine in 1977. I also got a Master's in Public Health from the University of North Carolina at Chapel Hill. I'm licensed to practice Medicine and Surgery in Egypt and in Virginia and at various times I have held medical licenses in other states.

[19-20] THE COURT: Okay. **Please give testimony to the points subject to your motions. Go ahead.**

[21-23] A. And I am putting this on the record (inaudible) I honestly do not remember whether you are going to allow me or not. I do not think any reasonable physician would prescribe Paxil.

[24] THE COURT: Okay.

[25] A. I'm allowed to testify.

[Page 122, line 1] THE COURT: **I said okay.**

[2-7] A. Okay. Fine. I do not think any reasonable physician would prescribe — I also know that, when people go to the emergency room, they are not allowed to have more than three days' worth of medication in any event. Especially now with the abuse and stuff, I don't think they are allowed to even have more than one day's worth of medication.

[8] THE COURT: Okay.

[9-13] A. Additionally, I think it very implausible for her to have been constantly crying and gone to the emergency room four months after she was handed a piece of paper. I did not assault — I did not strike her. She testified from the witness stand today that I struck her; so, I have the right to say that I did not strike her.

[14] THE COURT: **Have I stopped you?**

[15] A. No, you haven't. I'm just saying what I'm saying.

[16] THE COURT: **All right.**

[17-19] A. Okay. In fact, she claimed that did she did not want any contact with me. What had happened is that they had given me a letter saying they want to come into my apartment. And I was very afraid of them.

[20-21] THE COURT: All right. **I don't see the relevance of this in the after-discovered evidence. So...**

[22] **Defendant Faltas:** Could I say —

[23-24] THE COURT: **No. You can't say anything that's not relevant as to your motion for after-discovered evidence, ma'am.**

[25] A. But it's relevant to rebutting her testimony that I struck her.

[Page 123, lines 1-4] THE COURT: **That's already been adjudicated and affirmed.** Okay. **This is whether you have the grounds under our law and the limited constraints to be able to have a new trial and that's all I can allow, ma'am.** Okay.

[5-10] A. The other thing is that on November 17, 2019, actually before that date, I did not receive the notice of the court appearance for that assault allegation. And it turned out that I found out that Larry Mason had taken the notice from my mailbox and then later gave it to me. I wouldn't have known about the November 17th, 2009, hearing. In that hearing —

[11-13] THE COURT: **And that's not what we are here for. Now do you want to say something, do you want to testify about what paper you saw concerning Ms. Crouch I guess or Ms. Steele?**

[14] A. Yes.

[15-16] THE COURT: **Go ahead and say that but don't go into other hearings.**

[17] A. So when the matter was tried in general sessions —

[18] THE COURT: **Again.**

[19] A. I'm giving you the background.

[20-21] THE COURT: **I don't need the background. I want the testimony about this case and your motion and nothing else.**

[22-25] A. In November 2010, which is a year after 17 November, 2009; so, these are two different (inaudible) dates. I went to the City of Columbia to look at the discovery they had both for the harassment case which I remind you that she claimed she has been hurt. She still claims —

[Page 124, lines 1-6] THE COURT: All right. **And your point about this is you didn't get all the discovery and that was germane and proper for your prior hearings that you've lost. It's not for after-discovered evidence unless there is a document that you say they didn't give you that you could not have found. If there is, I'll probably reopen it shortly after I find that out.**

[7] A. Yes.

[8] THE COURT: Okay. **What is it? What is the document?**

[9-12] A. The document that said that she has no psychological effects and no need for a doctor. And it's so impossible, and I'm testifying as a physician, it is — this is what we call malingering. And I am testifying as a physician. And that's why she —

[13-15] THE COURT: **Did you raise at your trial that they didn't give you everything in discovery once you saw that? You saw it clearly before the trial was over, correct?**

[16-17] **A.** Remember I was not allowed — I tried to raise it; but Mr. Lupton cut me off.

[18-20] **THE COURT:** **Well, then you have a proper venue for that. I understand you have a PCR filed, correct? But that would not be germane for my part here.**

[21] **A.** Could I just finish my testimony for —

[22-23] **THE COURT:** **Not if you are going to be talking about stuff that has nothing to do with this motion.**

[24-25] **A.** It has to do with the fact that it's not possible for her to have suffered mental injury, especially it wouldn't have been —

[PAGE 125, LINES 1-2] **THE COURT:** **Do you think that you could give an unbiased opinion since you were charged — accused by her?**

[3] **A.** Absolutely. Just the same way that she —

[4-5] **THE COURT:** **And yet you don't think this court could give you a fair trial? See the irony in that, Dr. Faltas?**

[6-8] **A.** No, that is not — I'm sorry. If you are asking me under information that is a whole lot of difference between you are not under oath and you are in a position of power over me.

[9-10] **THE COURT:** **And everything I say and do is reviewed for your protection and mine.**

[11] **Defendant Faltas:** But —

[12] **THE COURT:** **Now back to the relevance of your motion.**

[13] **A.** The relevance is that she could not possibly —

[14-15] **THE COURT:** **You've said that, that in your opinion, your medical opinion, she could not have experienced at a later time.**

[16] **A.** That's not what I was about to say.

[17-18] **THE COURT:** **All right. Then say what you were about to say.**

[19-20] **A.** That she could not possibly have not wanted contact with me because two days later —

[21] **THE COURT:** **Hold on just a second. You need to come up and tell me something?** [18] (pause)

[24 to Page 126, line 1] **THE COURT:** **All right, you may continue. She just wanted to let me know she's locking the office up and wanted to know if I [125*126] needed anything. Go ahead.**

[2-3] **A.** Because two days later she came and knocked on my door and wanted to enter my apartment with me inside it. So, it's not possible —

[4-5] **THE COURT:** **Two days later from what date for the record?**

[6-7] **A.** Okay. Exactly three days later. From September 11, 2009. On September 14, 2009.

[8] **THE COURT:** Okay.

[9] **A.** She came and knocked at my door several times.

[10] **THE COURT:** Okay.

[10-11] **THE COURT:** **When was the alleged assault? What date was that?**

[12-13] **A.** September 11, 2009. And she claims that she did not want to have any contact with me.

[14-15] **THE COURT:** **Okay. And did you know that? Were you aware of that in September 11, 2009?**

[16] **A.** What?

[17-19] **THE COURT:** **Were you aware that she came to your place in 2009? Answer the question. Were you aware that she came to your place in September 2009?**

[20] **A.** I was aware that she wanted to come, yes.

[21-22] **THE COURT:** **Okay. How hard was it to answer that? Now the trial was in 2013. How is that after discovered?**

[23 to Page 127, line 8] **A.** When you begin to realize that there was perjury you take—you are asking me and arguing now my testimony and I'm telling you the argument answer. **When you realize that there was objective [126*127] perjury, then you look at everything else in the light of the lack of credibility of the witnesses in light of that perjury.** And one thing that should be looked at very closely is her false testimony that she did not want contact with me. But three days after that she came to my apartment and kept knocking and wanting to enter with me in it and complained that I did not open the door for her. **So, when you put that in the light of Charlene Crouch lying about her convictions or Dinah Steeling lying about her medical whatever —**

[9] **THE COURT:** **Now is this testimony or is this argument?**

[10] **A.** It's argument in answer to Your Honor's question.

[11] **THE COURT:** Okay.

[12] **A.** When you put that in that —

[13-14] **THE COURT:** **You can give that argument at the end. Confine yourself to testimony now, please.**

[15-17] **A.** Okay. So, my testimony is that they came on September 14th, Dinah Steele and Larry Mason, and kept knocking at my door and I couldn't let them in because I was afraid of them. Just a second.

[18] **THE COURT:** Sure.

[19-21] **A.** I'm sorry. Judge, may I also introduce or proffer pictures of Charlene Crouch going to that place as you (inaudible) that she wasn't truthful about the trespass having being lifted?

[22-23] **THE COURT:** You assume but there is no evidence in the record there wasn't. **Correct?**

[24-25] **A.** No, there is evidence that Charles White whom you are not exercising the compulsory --

[Page 128, lines 1-2] **THE COURT:** Ma'am, don't go there. Your disrespect to the courts is noted. I don't want it again.

[3] **A.** All right. My testimony is that Charles White told me.

[4-6] **THE COURT:** Which is hearsay. And he would have been your witness and you can't testify what one of your witnesses would have been if he didn't come in.

[7-8] **A.** But there is the argument that I would have wanted the court to enforce its compulsory process.

[9-10] **THE COURT:** Sure. You've already made that earlier.

[10] **A.** I'm sorry.

[11-13] **THE COURT:** You made that earlier. I don't know how we can enforce what we don't have the same powers outside the county as other courts do.

[14] **A.** That's why I wanted --

[15] **THE COURT:** I understand. Any more testimony?

[16] **Defendant Faltas:** No, thank you.

[17] (witness to the side)

[18-20] **THE COURT:** Okay. Quick argument. I think I've heard all of your arguments but if you want to summarize it I'll be glad to hear it.

[21-22] **Defendant Faltas:** No, thank you since you have already heard it.

[23] **THE COURT:** Okay.

[24] **Defendant Faltas:** You want the transcript?

[25] **THE COURT:** Yes, I do want the transcript.

[Page 129, line 1] **Defendant Faltas:** Okay.

[2-4] **THE COURT:** Absolutely. The transcript from the City of Columbia? Yes, I think that should be in the record for whatever reason. It needs to be a part of it.

[5-6] **Defendant Faltas:** Let me put it in order and with your understanding that this is the version that I got from --

[7-8] **Ms. Mangum:** Your Honor, I would be glad to provide the court with a certified copy.

[9-12] **THE COURT:** All right. I will allow a certified copy to be presented. However, for Dr. Faltas's protection in case I get run over by a truck between now and getting a certified copy, I'll take her copy and then when you get the certified copy I will switch it out.

[13] **Ms. Mangum:** Your Honor, that's my copy.

[14] **THE COURT:** That's your copy. Okay.

[15-16] **Ms. Mangum:** Just so you know. I think I've got some marks and handwriting in it.

[17-21] **THE COURT:** Okay. Let me say this. I'm not going to ever look at that. I'm going to let you substitute a certified copy but again I want to protect the record and she has it on the record that's here today and I've got to protect that. We need to keep all this in one separate thing to preserve it. Anything else from anybody?

[22-23] **Defendant Faltas:** Judge, I think I also wanted to present the transcript of Charlene Crouch's conviction of sexual battery.

[24 to Page 130, line 2] **THE COURT:** And I've already ruled that's not relevant. And I think you already have. I think that's part of this thing up here. [129*130] Hold on a second. I may already have that. You proffered that earlier.

[3] **Defendant Faltas:** I don't think --

[4-6] **THE COURT:** Right here. Her indictment, court of general sessions. Isn't that what this is here, ma'am? You gave this to me earlier.

[7-9] **Defendant Faltas:** Yes, sir. I also want to present the transcript of January 7, 2010, before then-Circuit-Judge James, now-Justice James she (inaudible).

[10] **THE COURT:** And the purpose for that is what, relevance?

[11] **Defendant Faltas:** The (inaudible) mental order.

[12] **THE COURT:** That she alleged mental then?

[13-14] **Defendant Faltas:** Yes. That it was way after the fact and ...

[15] **THE COURT:** What says the City?

[16] **Ms. Mangum:** Your Honor, in terms of the assault, second?

[17-20] **THE COURT:** She proffering it. I'm not allowing it into evidence. There's a difference between what I can consider. I am not considering that because I don't think it's relevance. If she wants to proffer it, then I am going to allow it. Okay.

[21-22] **Defendant Faltas:** And if I may find the transcript of the conviction of Charlene Crouch?

[23] **THE COURT:** No.

[24] **Defendant Faltas:** No. Okay.

[25 to Page 131, line 1] **THE COURT:** I don't think it's relevant. And again this is [130*131] not into evidence, it's just for proffer.

[2] **Ms. Mangum:** What is that? I'm sorry. Is it an N.C.I.C. report?

[3-7] **THE COURT:** No, it's a transcript. This is a transcript of record – this is the same thing I told you I wasn't going to do. I already said I'm not going to transfer. This is proper, the transcript from the hearing I guess when the second degree. I assume. Is that correct?

[8] **Defendant Faltas:** It's the hearing of the harassment.

[9-10] **THE COURT:** It's proffered. I'm not going to consider it but she's offered it.

[11-16] **Defendant Faltas:** May I ask Your Honor to consider it and to consider the credibility of the witness who sat here and said that I harassed her when no jury convicted me of harassment. In addition, in addition, during that hearing she pretended that I was preventing people from going to work. I have objective evidence that those people were unemployed at that time.

[17] **THE COURT:** And what's the relevance to this?

[18-19] **Defendant Faltas:** The relevance is that it's after-discovered of my false accuser having lied.

[20] **THE COURT:** And this was the bond hearing for what?

[21] **Defendant Faltas:** For the harassment charges.

[22] **THE COURT:** And didn't that occur before this trial?

[23-24] **Defendant Faltas:** But she sat here and said that I harassed her. Today. Today. Today.

[25 to Page 132, line 1] **THE COURT:** Merely because the jury didn't agree with her [131*132] doesn't mean that she was lying.

[2-3] **Defendant Faltas:** I'm saying now she sat here and lied; and I want to impeach the lie that she gave you from here.

[14-15] **THE COURT:** What was the lie that you are alleging she made today?

[6] **Defendant Faltas:** That I harassed –

[7-8] **THE COURT:** Officer, there are some documents on that table that's part of the record. Go ahead. Go ahead.

[9-13] **Defendant Faltas:** That I harassed her and one of the history of her lies is that in my bond hearing where she also testified about this assault charge she said that I was blocking people from going to work when at that time the people she said I was blocking were unemployed.

[14-15] **THE COURT:** Okay. And that was a hearing that took place prior to this trial. Okay. All right. Anything further?

[16] **Defendant Faltas:** I'm saying that she testified –

[17-18] **THE COURT:** I heard what she said and 'll decide what I can believe and credibility of everything I've heard under oath.

[19-20] **Defendant Faltas:** But I am trying to offer you *objective stuff* so you can –

[21 to Page 133, line 1] **THE COURT:** And I told you that that's not relevant. We are not here whether you can impeach her for what she said here today. You are here about whether you have after-discovered evidence that proves that she lied in the trial for which we are here for the motion for a new trial. Okay. We are done as far as every- [132*133] body?

[2] **Ms. Mangum:** Nothing from the City, Your Honor.

[3 to page 133, line 8] **THE COURT:** All right. I've got to tell you I've gone back and forth about whether I should reopen this. I'm concerned that perhaps, I have no full evidence, that not everything that was discoverable was given but I don't have any proof of that, *i.e.*, this alleged document. It may or may not exist. But the burden is on the moving party to do that. I have denied the motion to recuse. I have denied the motion to transfer to circuit court. I don't think I have the authority to transfer it if I wanted to. As to Mr. Lupton – there was a forum – certainly if he didn't get records, and this goes to what you are saying now still, that he could have made that motion at that time. There's a different forum. I understand there's a PCR filed. That can be heard at that time. Ms. Steele, the allegations about her being on medicine, I do believe that you could be objective as a medical professional even though you were a party to that. Okay. That was not my point that you could not be objective. My point is professionals often, even though when they are facing adversarial situations, can be objective and make their rulings based on in your instance your medical profession, and you may be absolutely right that some doctor may not have ought to have given her that medicine. That's for a different day and a different time. It doesn't go to this case *per se* as far as discover that she lied because some doctor may have committed malpractice, I can't say

he did or not. Okay. **And I don't want any more words out of you.** I've got to — you [133*134] said the 2010 case maybe she was lying. Again, that could have been discovered. **Charlene Crouch**, I do note that she had a drunkenness conviction. There seems to be a question, and we have this in the record, where it says the original court date is 5-18-2012. It doesn't appear there is a conviction date, but even assuming that it was on that 2012 date, you would not have been allowed to ask her about that conviction anyhow because it's not one of those that you are allowed to impeach; so, I don't see any relevance about that. The conviction for the second degree was after. You would not have been able to ask her because the law presumes everyone to be innocent until proven guilty beyond a reasonable doubt. So, I don't see that's relevant. [1] [Page 134, lines 13-18] I can't consider anything that Charles White said to you. I will take into consideration that you said he wrote a letter, had a letter saying that these people— he was lying to help these people out but that was 2009. Clearly that's not after discovered from your trial of 2013. Teresa Ingram, free rent to lie is what you allege, but she didn't testify in this trial so that's not relevant.

[19] **Defendant Faltas:** Can I preserve that --

[20 to page 136, line 5] **THE COURT:** [20 to page 135, line 21] **I've already said I don't need to hear any more from you. You have preserved what you've preserved.** Note any objection for the record. Any objection you have I will note for the record. At any rate, the standard I have is what I told you from before. I know you think that the courts don't give you a fair shake; but I got to tell you this. I've probably spent as much time on this [134*135] today as I have on twenty-five prior motions to reopen combined. **This is a little bit more complex in part because you are incredibly intelligent and have a penchant for details. There's nothing wrong, you shouldn't be ashamed about that. Shouldn't be ashamed for being intelligent or having a penchant for details. I'm not sure and I'm not making a ruling about whether they should have convicted you. That's not for me to rule at this date.** Unfortunately, in our system if there's after-discovered evidence that's all I'm looking for. I don't see anything that's after discovered that would meet the criteria that would probably change the result of a new trial if it were had because anything you're alleging would be merely impeaching instead of a direct on the fact lie. Now you testified under oath, I assume, at that trial you did not assault her, she testified under oath you did. The trier of fact made that decision. That's not for me. **I may have believed you had it been tried in front of me. I don't know. But I don't have that luxury of saying, you know, she wouldn't have fought this hard for so long if she didn't have some—and there's part of me that gave you leeway today that I might not normally give because you've fought long and hard for this. I do believe you believe in your heart and soul what you are saying.** However, I'm tied by what the law is. [22 to page 136, line 5] Now do I always agree with the law? No. You and I agree with that. There are things that statutes I wonder how could they pass that statute and mess it up. Rulings I see from whether it's circuit judges, court of appeals but you know what? Most of those [135*136] people are a lot smarter than me and just because I disagree with them doesn't mean that they are not right and I'm wrong and it also doesn't mean that they are right — I might could be right and they may be wrong. **But my hands are tied as far as the basis under which and for that I have no choice unfortunately but to deny your motion.**

[6] **Defendant Faltas:** Will there be a written order?

[7] **THE COURT:** Ma'am?

[8] **Defendant Faltas:** Will there be a written order, please.

[9-10] **THE COURT:** **A form order, yes. I'm sure there will be a form order, yes.**

[11] **Defendant Faltas:** No —

[12] **THE COURT:** **No, ma'am. That's my discretion.**

[13-14] **Defendant Faltas:** I just want to say that now there is PCR's they want (inaudible)--

[15-25] **THE COURT:** I just want to say it's my discretion as to how I do the order. I deny your motion. In most of the cases that I've observed as a lawyer, and I practiced law for twenty something years before I did this and did a lot of criminal stuff including death penalty cases, trials, pleas. Sometimes (inaudible). I've never seen this much time taken on a motion for a new trial. I'm not saying that it shouldn't. That's why we stayed here. If we had needed to stay here longer if you had something you could have said that was relevant I would have stayed here longer. That's what they pay me for. They pay me to protect you and to protect the City of Columbia or whoever is in front of me. If I made a mistake, I hope they overturn it.

[page 137, lines 1-2] **Defendant Faltas:** and what I'm saying, Your Honor, is that they might remand it for a more detailed order.

[3-9] **THE COURT:** **And should they do that I will be glad to give them more detailed. But I gave detailed ruling verbally to you on the record. I didn't have to do that. I could just have said you didn't meet the criteria.** I gave my reasons for that and that's as much to protect you because if I made the wrong assumption of what the law was, if I was wrong in what I wouldn't let in, then that would go to your benefit and they would have a record.

