STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	
State of South Carolina,	)	Case Nos: 2022-GS-15-00592
	)	2022-GS-15-00593
	)	2022-GS-15-00594
v.	)	2022-GS-15-00595
	)	
	)	**STATE'S REVISED PRE-HEARING BRIEF IN**
Richard Alexander Murdaugh,	)	**OPPOSITION TO DEFENSE MOTION FOR A**
	)	**NEW TRIAL**
Defendant.	)	
	)	

On Thursday, January 4, 2024, the Court requested further briefing from both parties to specifically address five issues:

1. List all potential witnesses planned to be called during the evidentiary hearing, and any objections or challenges you may raise to the opposing party's anticipated witnesses.

2. List all exhibits planned to be introduced during the evidentiary hearing, and any objections or challenges to the opposing party's exhibits.

3. Clarify the arguments as to whether Defendant is entitled to a new trial that will be made during the evidentiary hearing.

4. State any procedural issues which may impact the evidentiary hearing, in particular (a) issues regarding the subpoena of specific witnesses and (b) how the court should receive testimony and whether any such testimony should be conducted *in camera* rather than in open court.

5. State any other issues regarding the conduct for the hearing of the merits on the motion.

In response, the State here revises and expands its pre-hearing brief to address the specific questions of the Court, though not necessarily in the order as set forth above. Indeed, answers to the first and second questions raised by the Court are contingent on how the Court rules on the question of what standard and burden to apply to Defendant's motion. The scope of witnesses that the State intends to call depends, in

part, on who Murdaugh calls as movant, which in turn depends on how much Murdaugh most show to satisfy his burden of proof.

Therefore, the State's revised briefing below proceeds as follows:

1. BURDEN OF PROOF: Murdaugh must bear the burden of proof for his own motion and show that the material improprieties alleged actually occurred and that he was actually prejudiced thereby.

    a. Murdaugh contends otherwise, and argues erroneously that if the material improprieties alleged occurred, there is prejudice to him *per se*. The law does not support Murdaugh's argument.

    b. Because Murdaugh cannot show he was actually prejudiced by the material improprieties alleged, he is not entitled to a new trial. Furthermore, Murdaugh cannot show by that the material improprieties alleged actually occurred, and is thus not entitled to a new trial.

2. MOTION UNTIMELY: Additionally, Murdaugh's motion may be procedurally defective and untimely brought before the Court, given public statements of counsel at and around the time of its filing.

3. EVIDENTIARY HEARING UNNECESSARY: Notwithstanding the Court's clear statement of intent to hold an evidentiary hearing, the State argues for the purposes of preserving the issue that Murdaugh has failed to make a *prima facie* showing sufficient to justify an evidentiary hearing.

4. WITNESSES, EXHIBITS, AND PROCEDURE: Irrespective of burden, the State proposes that each of the twelve jurors who deliberated be polled by the Court. This inquiry should be conducted in open court, but in a manner to protect the identities of the jurors. If juror responses necessitate further inquiry, additional questioning may be warranted.

    a. EVIDENCE AND OBJECTIONS: If questioning of the jurors and the law applied does not resolve the motion, and if Murdaugh has not already done so, the State may call members of court and clerk staff to further establish no material improprieties occurred, SLED agents as necessary to explain their investigation, as well as the legal representative to two jurors to confirm Murdaugh was not dilatory in raising the issue to the court. The State will object to witnesses and exhibits whose testimony would serve only to impeach one or more other witnesses by proof of specific instances of conduct through extrinsic evidence, and whose probative value would be substantially outweighed by the danger of unfair prejudice, confusion of the issues, and undue delay and waste of time.

b. PROCEDURAL ISSUES: the Court should receive all testimony in open court, not in camera, but with limitations on media recording and broadcasting of the images or names of the jurors.

The State's revised brief follows.

I. BURDEN OF PROOF: Murdaugh must carry the burden of proving both that an improper contact occurred with the jury and that he was actually prejudiced thereby.

First is the appropriate burden and standard to apply to a motion for a new trial based on allegations of improper contact with the jury by clerk of court or court official. Namely, if the conduct alleged is proven, (1) must prejudice be shown, and (2) if so, who must carry the burden of showing prejudice? The law, and consequently the State, focuses on the jury. Murdaugh focuses on Clerk Hill. Prejudice must be shown, and it is Murdaugh's burden to do so.

Criminal defendants have a right to a fair and impartial jury, and private communications or contact with jurors during a criminal trial about the matter pending before them may necessitate an evidentiary hearing and, if defendant can show actual prejudice, a new trial. *See State v. Kelly*, 331 S.C. 132, 141-42, 502 S.E.2d 99, 104 (1998) ("In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences. Unless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict."); *see also Smith v. Phillips*, 455 U.S. 209, 215 (1982) ("This Court has long held that the remedy for allegations of juror partiality is a hearing which the defendant has the opportunity to prove actual bias."); *State v. Green*, 432 S.C. 97, 100, 851 S.E.2d 440, 441 (2020) (unanimously declining to adopt *Remmer v. United States*, 347 U.S. 227 (1954) and its presumptive prejudice standard in every instance of improper contact, and reversing the lower court opinion

that did so.). The law holds jurors in high regard and presumes that they fulfill their duties as instructed, with solemn diligence, impartial contemplation, firmness, and conviction, and that they are not readily swayed from the proper fulfillment of their duties by every wind of opinion that blows around their ears. *State v. Grovenstein*, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999); *State v. Rowell*, 75 S.C. 494, 56 S.E. 23, 29 (1906); *see also United States v. Olano*, 507 U.S. 705 (1993) (quoting *Francis v. Franklin*, 471 U.S. 307, 324, n. 9 (1985)) (In declining to presume prejudice from the presence of alternate jurors during deliberations, explaining "we presume that jurors, conscious of the gravity of their task, attend closely the particular language of the trial court's instructions in a criminal case and strive to understand, make sense of, and follow the instructions given them."). "Objections to verdicts on the ground that one or more of the jurors has been subjected to outside influences must be looked at in a practical way and every case decided on its own facts." *Rowell*, 56 S.E. at 29. A simple jury poll may cure any procedural irregularities, and confirm that each juror approves of the verdict returned and that no one has been coerced or induced to agree to a verdict to which he or she does not actually assent. 89 C.J.S. Trial § 1002; *State v. Linder*, 276 S.C. 304, 308-09, 278 S.E.2d 335, 338 (1981).

The facts and opinion in *Rowell* are instructive. Rowell was convicted of manslaughter for shooting and killing a man armed with a stick in a drunk argument, right in front of a City of Florence police officer. *Rowell*, 56 S.E. at 28. Of relevance here, a juror provided an affidavit that while he was sequestered at a hotel overnight, a bailiff "talked about the case in his presence, and said that the defendant should be punished[.]" *Rowell*, 56 S.E. at 29. The trial court held that there was nothing presented

to show that the verdict was influenced by the bailiff's communications to the juror and denied the motion. *Id.* The Supreme Court of South Carolina affirmed the lower court's ruling on that issue, opined that "[w]here, without any misconduct on the part of the juror or the constable who had him in charge, an opinion was imprudently volunteered in the presence of the juror by another constable, we do not think it would be reasonable to reach the decision that the conclusion of this juror and the whole panel was influenced by it." *Id.* Moreover, the Supreme Court *did* reverse Rowell's conviction, not because of the imprudent opinion of the bailiff, but because of an erroneous jury instruction on fighting words and self-defense. *Id*.

a. Murdaugh's attempts to distinguish the authorities on which the State relies are based on nothing more than his own willful blindness to their explicit applicability.

Murdaugh, in an attempt to critique the law as set forth above, expresses that the State has cited "no authority" to support its position, and otherwise feigns confusion throughout. Murdaugh's confusion may generously be prescribed to his strategically myopic focus on Clerk Hill, rather than on the actual legal question of whether he was convicted of brutally murdering his son and wife with a shotgun and a rifle by an impartial jury free from improper influence.

The admonitions of *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998) are as binding in the present matter as in any case involving the provision of extraneous information, commentary, or guidance. "In determining whether *outside influences* have affected the jury, relevant factors include (1) the number of jurors exposed, (2) the weight of the evidence properly before the jury, and (3) the likelihood that curative measures were effective in reducing the prejudice." *Id.*, 331 S.C. at 63, 502 S.E.2d at 628 (emphasis added). The present matter concerns allegations of outside influences

on the jury and whether they affected them. Both the majority and the dissenting minority analyzed the actual prejudice of the pamphlet retained and introduced by the juror at question in *Kelly*; the dissent's ultimate conclusion was not that analysis for actual bias was improper, but that "[w]hen considered in its totality, the compelling conclusion is that the outcome of both phases of appellant's trial was influenced by cumulative bias on the part of his jury." *Id.*, 331 S.C. at 157, 502 S.E.2d at 112 (Finney, J., Toal, J. dissenting).

Murdaugh also expresses confusion about the relevance of *Smith v. Phillips*, 45 U.S. 209 (1982), despite citing to the same language as set forth in the parenthetical himself in his Motion for a New Trial as authority to support his argument that he was entitled to the hearing now scheduled. *See Id.* at 215 ("The Court has long held that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias."); *compare* Motion for a New Trial at 9-10 (citing same). *Smith* explores *Remmer v. United States*, 347 U.S. 227 (1954), on which Murdaugh previously relied, and abrogates *Remmer* to the extent which it may be relied upon for the proposition that prejudice must be presumed where external influences are brought upon the jury:

> This Court recognized the seriousness of not only the attempted bribe, which it characterized as "presumptively prejudicial," but also of the undisclosed investigation, which was "bound to impress the juror and [was] very apt to do so unduly." Despite this recognition, and a conviction that the "[t]he integrity of jury proceedings must not be jeopardized by unauthorized invasions," the Court did not require a new trial like that ordered in this case. Rather, the Court instructed the trial judge to "determine the circumstances, the impact thereof upon the juror, and whether or not [they were] prejudicial, in a *hearing* with all interested parties permitted to participate."

Smith at 215-16. That *Smith* abrogates *Remmer*'s "presumption of prejudice" standard and places the burden of showing actual prejudice on Defendant is recognized by multiple federal circuit courts. *See United States v. Pennell*, 737 F.2d 521, 532-33 (6th Cir. 1984) (concluding that *Smith* "so changed the rules relating to unauthorized communications with jurors that the presumptive prejudice standard . . . no longer governs" and that *Remmer*-as-reinterpreted-by-*Smith* provides for "a hearing in which the defendant has the opportunity to prove actual bias."); *United States v. Williams-Davis*, 90 F.3d 490, 494-99 (D.C. Cir. 1996) (reviewing *Remmer* in the context of *Smith*, *Pennell*, and *Olano*, before affirming the lower-court's inquiry into whether any particular intrusion into the jury showed enough of a 'likelihood of prejudice' to justify assigning the government any burden); *United States v. Sylvester*, 143 F.3d 923, 933-94 (5th Cir. 1998) (reviewing *Remmer* in the context of *Smith*, *Olano*, and *Williams-Davis*, before concluding "[w]e agree that the *Remmer* presumption of prejudice cannot survive *Phillips* and *Olano*. Accordingly, the trial court must first assess the severity of the suspected intrusion; only when the court determines that prejudice is likely should the government be required to prove its absence."); *see also Criminal Procedure – Jury Tampering – Ninth Circuit Holds that Glaring by Government Agents May Trigger Presumption of Prejudice. – United States v. Rutherford, 371 F.3d 634 (9th Cir. 2004)*, 118 Harv. L. Rev. 2445 (2005) (critiquing application of *Remmer* presumption to mere staring by a federal agent and noting rejection of *Remmer* in part or whole by authorities above).

Admittedly, many circuits continue to apply the *Remmer* presumption of prejudice, either in part or in whole, pending a more explicit statement from the

Supreme Court of the United States that it is overruled, and avoid addressing the continued applicability of *Remmer* if they can do so. *See United States v. Scull*, 321 F.3d 1270, 1280 n.5 (10th Cir. 2003) (acknowledging other circuits already concluded *Remmer* presumption was abrogated, but resolving to continue applying it for want of a Supreme Court case expressly stating as much); *see also Tong Xiong v. Felker*, 681 F.3d 1067, 1076-78 (9th Cir. 2012) (declining to apply the *Remmer* presumption to the observations made by three jurors of the defendant in a court hallway, let alone a *per se* prejudice standard, although treating it as otherwise controlling for any unauthorized communication between a juror and a witness or interested party); *United States v. Tejeda*, 481 F.3d 44 (1st Cir. 2007) (acknowledging circuit split, but that "[a]lthough we too have questioned *Remmer*'s continuing vitality, . . . we need not decide today whether, or to what extent it remains good law. Here . . . the facts simply do not warrant the application of a *Remmer* presumption."); *Parker v. Head*, 244 F.3d 831, 839 n.6 (11th Cir. 2001) (acknowledging and summarizing circuit split over continued viability of *Remmer* presumption, but not deciding issue because even applying the presumption resulted in denial of *habeas* relief); *Barnes v. Joyner*, 751 F.3d 229 (4th Cir. 2014) (holding North Carolina state post-conviction court contravened clearly established federal law by failing to follow *Remmer*'s rebuttable presumption approach *and* requirement that hearing be held on juror misconduct claim).

However, it is not necessary for this Court to resolve a federal circuit split regarding the continued viability of *Remmer* because, as it may concern criminal adjudication in this state, the Supreme Court of South Carolina resolved that split when it reversed the Court of Appeals' application of the *Remmer* presumption to an instance

of a bailiff communicating improperly with a juror regarding the case before them, even as both courts reached the same ultimate conclusion that the conviction was valid and no prejudice existed. *State v. Green*, 432 S.C. 97, 99-100, 851 S.E.2d 440, 441 (2020); *see also State v. Aldret*, 333 S.C. 307, 313-14, 509 S.E.2d 811, 814 (1999) ("[W]e hold the burden is on the party alleging premature deliberations to establish prejudice[,]" functionally syncing the burdens for internal and external misconduct allegations.).

Of course, Murdaugh also attempts to stand *Green* on its head. "There is no suggestion in *Green* that a comment by a state official that did bear on the merits of the case could also be harmless." Defendant's Pre-Hearing Brief Re: Motion for a New Trial at 7. *Green* limits the applicability of *Remmer* to cases where a bog-standard prejudice analysis of the particular facts and circumstances, if proven true by evidence presented by the movant, would reach the same conclusion as that which would be presumed, which thus obviates the existence of a legal presumption—to continue calling it a "presumption" only serves to confound the law. *Cf. Fryer v. Fryer*, 9 S.C. Eq. (Rich. Cas.) 85, 95 (1832) ("It is too much the practice to convert mere matters of evidence into rules of law; and, under the specious names of badges and presumptions, compel courts and juries to draw inferences, according to artificial rules, against their real belief."). Furthermore, even if *Green* leaves *Remmer* any room for more than procedural effect in South Carolina (i.e. a hearing is necessary upon a *prima facie* showing of such a communication), it would do so to apply a *Remmer* presumption in precisely the circumstance of "a comment by a state official that did bear on the merits of the case," which would be rebuttable by showing the comment to be harmless. Murdaugh's analysis of *Green* is muddied by his indecision as to whether he should

argue that he is entitled to a *Remmer* presumption—as he once desired—or an unfounded and unprecedented application of *per se* prejudice.

Finally, Murdaugh cites to *Parker v. Gladden*, 385 U.S. 363 (1966), and argues it represents that the statement of "that wicked fellow, he is guilty" cannot be harmless. However, *Parker* is factually distinguishable because he was able to do what Murdaugh cannot: "one of the jurors testified that she was prejudiced by the statements[.]" *Parker* at 365. The issue in *Parker* then became whether Oregon's dreadful law that permitted a non-unanimous jury verdict to sustain a conviction meant there was no prejudice—the Court rejected that argument, and then rejected the non-unanimous verdicts in a fractured opinion decades later. *Parker* at 365; *see, generally Ramos v. Louisiana*, 590 U.S. __, 140 S.Ct. 1390 (2020) (holding constitution requires unanimous verdicts to convict a defendant of a serious offense). In this case, Murdaugh has presented an affidavit from a single juror who deliberated, and that juror prescribed her verdict to pressure from other jurors—not anything Clerk Hill allegedly said.

b. Murdaughs' proffers two mutually exclusive standards, neither of which are supported by either controlling authority or good sense.

As noted above, instead of the State's straightforward and reasonable conclusion that movant must carry the burden of his own claims, Murdaugh contends each of two inconsistent standards apply. Most ambitiously, Murdaugh argues that if it is shown that a court official engaged in improper, private communications with members of the jury, such communications would constitute a "structural error." "Structural defects affect the entire conduct of the trial from beginning to end, whereas trial errors occur during the presentation of the case to the jury and may therefore be quantitatively assessed in the context of other evidence presented in order to determine whether its admission was

harmless beyond a reasonable doubt." *State v. Jenkins*, 412 S.C. 643, 650-51, 773 S.E.2d 906, 911 (2015) (quoting *State v. Mouzon*, 326 S.C. 199, 204, 485 S.E.2d 918, 921 (1997)) (cleaned up). "Differentiating between structural and trial errors serves to enforce procedural safeguards while ensuring that inconsequential, technical errors do not result in a new trial." *Id.*, 412 S.C. at 651, 773 S.E.2d at 911 (quoting *State v. Chavis*, 412 S.C. 101, 115, 771 S.E.2d 336, 343 (2015) (Hearn, J., dissenting)). "Most errors that occur during trial, including those that violate a defendant's constitutional rights, are trial errors that are subject to harmless error analysis." *Id*. (citing *State v. Rivera*, 402 S.C. 225, 246, 741 S.E.2d 694, 704 (2013)).

Framing the allegation raised as one of a "structural" error subject to *per se* prejudice is wholly without precedential support. The Supreme Court of South Carolina has already explicitly rejected *per se* prejudice in the context of external influence on a jury. *See State v. Aldret*, 333 S.C. 307, 313-14, 509 S.E.2d 811, 814 (1999) (citing *United States v. Olano*, 507 U.S. 725, 736-38 (1993)) ("Given that we have not found automatic reversal warranted even in cases of external influences on a jury's verdict, we decline to do so in the cases of internal misconduct consisting of premature deliberations."); *Blake by Adams v. Spartanburg General Hosp.*, 307 S.C. 14, 18, 413 S.E.2d 816, 818 (1992) ("[A] bailiff's remarks to a juror are not per se grounds for setting aside a jury verdict. The test is whether the verdict was solely the result of honest deliberation on the case as publicly developed at trial, or whether there is reason to suppose outside influences entered into it as a factor. Every case of this kind must be decided on its own facts."). That the alleged external influencer was a court official is of no consequence—indeed, many of the cases dealing with the subject involve bailiffs, as

seen in the facts of the cases explored above. Murdaugh's only citation in "support" follows a tortuous reimagining of the Court's ability to consider the strength of the evidence against him as an ability to direct a verdict of guilty against him, and even then to a case concerning a jury instruction which omitted an element of an offense. Defendant's Pre-Hearing Brief Re: Motion for a New Trial at 3 (citing *Neder v. United States*, 527 U.S. 1, 34 (1999) (Scalia, J. dissenting[1])). Indeed, the application of *per se* prejudice has been rejected even by the jurisdictions which still consider a *Remmer* presumption. *See, e.g. Tejeda*, 481 F.3d at 50 (declining to apply structural error analysis to a claim of juror bias, adding in a footnote that it would be inconsistent with *Remmer*); *Tong Xiong*, 681 F.3d at 1077 (rejecting dissent's argument for *per se* prejudice as inconsistent with *Remmer*). Finally, analysis of Murdaugh's allegations as "structural error" would be fundamentally inconsistent with the standards set forth in *Kelly* and *Green*—there is no point to considering the impact on the jurors, the number of jurors exposed, the strength of the evidence, or questioning jurors as commended by the court in *Green* if prejudice from an improper communication is *per se*.

The State cannot overstate the impossibility of the structural-*per se* prejudice standard suddenly insisted upon by Murdaugh. Neither the State nor the judiciary can prevent in all instances jurors from being confronted with uninvited communications from third-parties, even if jurors were again treated like prisoners like in the days of old.[2] In Murdaugh's construction, defendants themselves could anonymously call jurors, or direct others to do so, with threats or comments upon the merits of the trial and thereby

[1] Scalia concurs in part and dissents in part, but that portion of the opinion relied upon by Murdaugh is very much in dissent. Murdaugh's citation implying that it was concurring is mildly misleading.
[2] Even our prison inmates have cell phones, to the State's chagrin and public's bloody and narcotic detriment.

invalidate the proceedings at a whim. Any unwanted text message, any shout from a crowd, or even any inadvertent eavesdrop on a conversation between people at the courthouse could invalidate days, weeks, or months of proceedings. The gears of justice turn slowly now, but in Murdaugh's construction they would stop forever for him and anybody else facing trial for a serious crime. The Constitutions of this State and the United States provide for justice, not such injustice.

More conservatively, Murdaugh relies upon *State v. Cameron*, 311 S.C. 204, 208, 428 S.E.2d 10, 12 (Ct. App. 1993), which is itself inconsistent with his "structural error" argument,[3] and argues that if it is shown that a court official engaged in improper, private communications with members of the jury, "a new trial must be granted unless it clearly appears that the subject matter of the communication was harmless and could not have affected the verdict." Defendant's Pre-Hearing Brief Re: Motion for a New Trial at 2; Motion for a New Trial at 10. *Cameron* is a divided Court of Appeals opinion, and thus cannot control over of the standards articulated by the Supreme Court of the United States in *Smith v. Phillips* and the Supreme Court of South Carolina in *Kelly*, *Green*, and *Rowell*. The opinion is also not entirely consistent internally; it both acknowledges that "[t]he mere fact . . . that some conversation occurred between a juror and a court official would not necessarily prejudice a defendant," and quotes a Fourth Circuit opinion declaring that the same "cannot be tolerated[.]" *Cameron*, 311 S.C. at 207-08, 428 S.E.2d at 12. Furthermore, the Fourth Circuit opinion in *Holmes v. United States*, 284 F.2d 716 (4th Cir. 1960), however persuasive it may have been to the divided Court of Appeals in *Cameron*, is itself not controlling. *Johnson v. Williams*, 568

[3] Murdaugh, undeterred, nonetheless argues *Cameron* supports his assertion the issue he brings is structural.

U.S. 289, 305 (2013) ("[T]he views of the federal courts of appeals do not bind [a state supreme court] when it decides a federal constitutional question[.]"); *Limehouse v. Hulsey*, 404 S.C. 93, 744 S.E.2d 566 (2013) ("Although this Court often defers to Fourth Circuit decisions interpreting federal law, . . . it is not obligated to do so in view of the lack of uniformity amongst the federal circuits."); *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 282 S.C. 144, 146, 318 S.E.2d 10, 11 (1984) ("[The Supreme Court of South Carolina] is not bound by the rulings of the Circuit Court of Appeals . . ."). Finally, the conclusion in *Cameron* does not at all appear to rely upon any presumptions, but rather turns on the forelady's testimony to the trial judge which reflected that both she and the rest of the jury were actually confused by the bailiff's statement in the course of their deliberations. *Id*., 311 S.C. at 209, 423 S.E.2d at 12 (Goolsby, J., concurring) ("Clearly, the jury, judging from what both the bailiff and the forewoman testified to, had forgotten or, at the very least, were confused about the trial judge's instructions regarding the effect of each of the two verdicts of guilty.").

Murdaugh is particularly sardonic in responding to the State's own string-cite to *Cameron* as support for the proposition that "[n]ot every inappropriate comment by a member of the court staff to a juror rises to the level of constitutional error[,]" a quotation from *Green*, but does not contest it. The "unremarkable proposition" is of considerable import in the present matter because the jurors disagree as to what, *if anything*, Clerk Hill ever said to any of them. As noted in the State's Response to Defendant's Motion, some jurors acknowledge neutral admonitions to pay attention, which can hardly prejudice anybody. *See* State's Response to Defendant's Motion at 21-22, Exh. B. Murdaugh also appears befuddled by the State's citations to *Smith v. Phillips*, 455 U.S.

209 (1982) as *Smith*, despite it being the only *Smith* case cited in the entirety of the State's Response, and despite its full citation on the preceding page. As set forth above, an explicit statement from the Supreme Court of the United States that movant must show actual bias in a claim of juror impartiality, whatever the source of that impartiality, at the same time as it considers *Remmer* in its history of so requiring, is hardly "irrelevant." To the contrary, *Smith* is controlling.

c. Murdaugh cannot meet his burden because no credible evidence exists to show Clerk Hill made any comments to jurors regarding the merits of the case and because the jurors themselves refute that they considered anything but the evidence properly before them.

The burden rests with the movant, in this case Murdaugh, to prove that an improper contact occurred between at least one juror who deliberated and a non-juror, and further that he was actually prejudiced by that improper contact. The subject matter of the communication is but one factor in determining whether prejudice exists. The personal and professional characteristics of the alleged external influencer is but another factor in determining whether prejudice exists. The jurors themselves, under the procedure commended by *Green*, may attest to their compliance with the instructions of the Court to consider only the evidence and arguments properly presented, and that their verdict was based solely thereon, and that testimony may be taken together with all of the *Kelly* factors to determine whether Murdaugh has met his burden of showing actual bias. Murdaugh insists on any other standard because he knows he cannot satisfy that set forth by law, and because that failure will frustrate his hope of putting anybody other than himself on trial through the scheduled evidentiary hearing.

Thus, in summary, the State's argument is that Murdaugh is not entitled to a new trial because he cannot present any evidence that any juror was improperly influenced, because the jurors each individually affirmed at trial and again in written and video recorded statements that the verdict was their own and free of external influence, and because Clerk Hill did not exert or attempt to exert any improper influence on the jury.

II. MOTION WAS NOT TIMELY FILED: statements by Murdaugh's Counsels and associate suggest he knew of the allegations raised in his Motion for a New Trial and was dilatory in raising them to the Court's attention.

Additionally, Murdaugh's motion is arguably procedurally deficient. A review of the motion does not reveal precisely when or how it is he learned of the claims he now raises. Before the Court of Appeals, Murdaugh only provided an affidavit to that effect as required by *State v. DeAngelis*, 256 S.C. 364, 182 S.E.2d 732 (1971), upon prompting by the State, and even then only begrudgingly and with complaint. The State has reason to believe Murdaugh's affidavit is untruthful, and not merely because Murdaugh himself has proven to be extraordinarily untruthful at trial and throughout his entire life.

Where a defendant knows or could have known of a constitutional issue at the time of trial, the defendant is obliged to timely raise that issue to the Court's attention or else waive it on future appeals. *State v. Powers*, 331 S.C. 37, 42-43, 501 S.E.2d 116, 118 (1998); *State v. McWee*, 322 S.C. 387, 472 S.E.2d 235 (1996); *State v. Byram*, 326 S.C. 107, 113, 485 S.E.2d 360, 363 (1997); *see also State v. Aldret*, 333 S.C. 307, 315, 509 S.E.2d 811, 815 (1999). Except for motions for new trials based on after-discovered evidence, post-trial motions must be made within ten days after the imposition of the sentence. Rule 29(a), SCCrimP. Where a defendant does not learn of a constitutional violation until after trial, the defendant is obliged to seek relief within one

year of the actual discovery of the violation or when it could have been discovered through reasonable diligence, or within one year of the sending of the remittitur from appeal. *See* Rule 29(b), SCCrimP (as much in the context of after-discovered evidence);[4] S.C. Code Ann. § 17-27-45 (in the context of the Uniform Post-Conviction Procedure Act).

Murdaugh's counsels have made *numerous* statements to various media outlets indicating they were potentially aware of an issue with the jury at and about the time of trial. In a press conference on the steps of the Court of Appeals on September 5, 2023, counsel Harpootlian, responding to a question as to whether the defense saw the alleged conduct during the jury view or found out about it after the fact, replies "I think… we observed it… I was there, I watched it."[5] Later at that same press conference, when a reporter asked if they approached the jurors or vice-versa, counsel Griffin replied that "[i]mmediately in the aftermath of the verdict, we had received information that we needed to look into what happened in the jury room."[6] In one interview with Good Morning America on September 6, 2023, counsel Griffin states that "soon after the trial… actually, as soon as the verdict was rendered, we had gotten some indication from folks in the courtroom that there was something untoward that had happened in the jury room. We didn't know exactly what, um, and we went on a campaign to find out what."[7]

[4] Murdaugh submitted his Motion for a New Trial pursuant to Rule 29(b), SCCrimP.
[5] Accessible at https://www.youtube.com/live/myuNfAevjAw?si=Vshu_NMu2-JLFxPf&t=200 at 3:19 as of January 10, 2024.
[6] Accessible at https://www.youtube.com/live/myuNfAevjAw?si=lVDeYxQDfv9LkwHT&t=311 at 5:10 as of January 10, 2024.
[7] Accessible at https://www.goodmorningamerica.com/news/video/alex-murdaugh-attorneys-call-new-trial-102955711 at 0:12 as of January 10, 2024.

Later on September 6, 2023, attorney Joseph M. McCulloch, Jr., who represents two jurors who provided affidavits to Murdaugh, stated to Court TV that he came to be involved with the jurors "because [he] was asked to be," (though he does not disclose who asked) initially for the purpose of protecting jurors from swarming press attention

If Murdaugh's counsels were indeed informed of the allegations immediately after the verdict, before sentencing, then Murdaugh was obliged to raise his concerns to the Court immediately, even if the concerns were at that time ill-defined or inchoate. If Murdaugh's counsels directed McCulloch to speak to jurors, or even insinuated a desire for such to occur in the fashion of a king complaining of a turbulent priest, McCulloch may be an agent of Murdaugh under the law.

Murdaugh and his counsels, at the hearing scheduled for Tuesday, January 16, 2024, should be required to explain the inconsistency between their statements to the media regarding the time of their discovery of the allegations and the affidavit submitted by their client. If counsels did indeed know of these claims at the time of trial, the motion for a new trial is untimely filed and must be denied.

III. EVIDENTIARY HEARING IS UNNECESSARY: because Murdaugh has failed to make a *prima facie* showing of prejudice, no evidentiary hearing is necessary.

The State acknowledges the Court's decision to proceed with an evidentiary hearing. Nonetheless, in order to ensure this issue is preserved, and because the same arguments go to the question of whether Murdaugh has met his burden of showing actual prejudice, the State retains and restates here its arguments that no such hearing is necessary.

No further evidentiary inquiry is necessary as Defendant failed to make a *prima facie* showing required to necessitate an evidentiary hearing. Not a single juror who

actually deliberated on the case indicates that their deliberations or verdict was in any way affected by the improper contacts alleged. The jurors were polled individually and affirmed their verdicts on the record. *See* State's Response to Motion at 21-22.

Murdaugh offers with his motion an affidavit from only one juror who deliberated: [redacted] In the affidavit, [redacted] attributes statements to Clerk Hill which resemble arguments made by the State, but [redacted] does not claim [redacted] was influenced by Clerk Hill, but rather merely felt pressure from other jurors. Due process is not implicated by pressure upon one juror by other jurors. *See, generally State v. Franklin*, 341 S.C. 555, 534 S.E.2d 716 (Ct. App. 2000) (due process not implicated where other jurors verbally abused a holdout for at least four hours). Thus, [redacted] affidavit is affirmatively inconsistent with a *prima facie* showing necessary for an evidentiary hearing. *See* State's Response to Motion at 19-20.

[redacted] – [redacted] did not participate in deliberations and was removed for [redacted] own violations of the court's instructions not to discuss the case with third-parties, and lack of forthcoming candor regarding those discussions. Further, when asked by Judge Newman at trial if Clerk Hill discussed anything about the case with anybody on the jury, [redacted] replied **"not that I'm aware of."** *See* State's Response to Motion at 10-16; 20; 23; Trial Tr. 5553, ll. 22-25. The affidavits in the defense motion on their own do not support a new trial and the motion should be denied on the pleadings.

Moreover, none of the other jurors who deliberated who spoke to SLED after Murdaugh filed his motion indicated their verdict was in any way based on anything but

a fair consideration of the evidence, further supporting that the motion should be rejected on the pleadings. *See* State's Response to Motion at 21-22.

Nonetheless, Murdaugh argues that a hearing is necessary, seemingly in order to impeach Clerk Hill. That a potential witnesses may be impeachable is inconsequential to whether Defendant has made a *prima facie* showing. The jurors found Murdaugh guilty, affirmed their verdict when polled, and none have alleged Clerk Hill influenced them. *See* State's Response to Motion at 24. Thus, no evidentiary hearing is necessary and the motion should be denied.

IV. WITNESSES, EXHIBITS, AND PROCEDURE: the evidentiary hearing procedure should be judicially guided questioning of jurors who deliberated, followed as necessary by other witnesses called by the parties, but the scope of relevant evidence is limited.

Each of the twelve jurors who deliberated must be called as witnesses before the Court to affirm the verdict in order to satisfy Murdaugh's burden of prejudice. Any inquiry to jurors should be limited and judicially conducted to minimize intrusion into the lives of those who performed such public service in this case. Assuming the Court rules as argued above that Murdaugh must show prejudice, the following questions to deliberating jurors, based in what the record on appeal reflects the trial court used in *State v. Green*, 432 S.C. 97, 851 S.E.2d 440 (2020), should be sufficient, with additional inquiry to be conducted only if necessary:

1. On March 2, 2023, did you answer when polled that your verdict was guilty on each of the charges?

2. As you were instructed to do by Judge Newman, was your verdict on March 2, 2023 based solely on the testimony, evidence, law, and arguments of counsel as presented at the trial?

This is sufficient to determine whether there was any improper effect on the verdict and minimizes intrusion on the jury, while preserving the focus of the proceedings upon the

allegation actually raised by Murdaugh's motion. *See* State's Response to Motion at 5-6.

Rule 606(b), SCRE, also makes this principle clear:

> Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

In the event any juror's answer to the above questions raises the need for additional inquiry, then additional inquiry would be warranted with questions from the Court, questions suggested to the Court by counsel, and questioning by counsel, as well as evidence from additional relevant witnesses.

a. EVIDENCE AND OBJECTIONS: the scope of the witnesses the State intends to call is contingent upon this Court's rulings, but may include the jurors who deliberated, jurors who did not deliberate, clerk staff, court staff, law enforcement, and others with knowledge.

The State addresses the types of witnesses and anticipated objections below. However, a list of potential witnesses and exhibits is sent separately as it contains sensitive identifying information.

1. <u>Deliberating jurors</u>

Procedurally, the State contends the evidentiary hearing should begin with the previously suggested short polling of each juror as to their verdict. The results of that examination will determine first, whether further inquiry should occur, and second, the relevance of specific witnesses and specific subjects to that inquiry. *See, generally*

Rule 611(a), SCRE (court has reasonable discretion to control mode and order of interrogating witnesses and evidence); *State v. Green*, 432 S.C. 97, 100, 851 S.E.2d 440, 441 (2020) (affirming trial court's "deft handling" of contact with bailiff through limited inquiry to jurors). If there is no indication of any prejudice then there is no need for further inquiry. *See State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999) (defendant has the burden to demonstrate prejudice from allegations of internal misconduct by or external influence on jury).

Only in the event a juror's response necessitates further inquiry, would the State have specific objections to certain witnesses and specific objections to portions of certain witnesses' testimony. This list of course cannot be exhaustive and will ultimately depend on how the testimony and evidence develops at any hearing.

First, the State would generally object to any inquiry to the jurors beyond that which is allowed by Rule 606, SCRE. That rule prohibits any inquiry into internal jury discussions, mental processes, mind or emotions, and discussions. Our state appellate courts have repeatedly indicated that any judicial inquiry beyond whether "extraneous improper information" affected the jury is improper unless it goes to fundamental fairness. *See State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999) (defendant must demonstrate prejudice from allegations of internal misconduct such as premature deliberations, and defendant was not only procedurally barred from failing to timely raise the issue), *State v. Hunter*, 320 S.C. 85, 463 S.E.2d 314 (1995) (inquiry proper where juror claimed racial prejudice influenced verdict); *See also State v. Zeigler*, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005) (finding that although jurors submitted note asking defendants to testify, trial judge's charge and affidavits did not indicate any juror based

the decision on a defendant's lack of testimony); *State v. Franklin*, 341 S.C. 555, 324 S.E.2d 716 (Ct. App. 2000) (internal pressure from jurors, including "screaming" and calling one "stupid" and other names, was insufficient to raise concerns of fundamental fairness to invade internal deliberations of verdict). Indeed, as the Court of Appeals noted in *Franklin*:

> But the integrity of the jury system is jeopardized any time a court finds it necessary to intrude into the internal deliberation process. Such an inquiry should not be lightly made.

State v. Franklin, 341 S.C. 555, 562, 534 S.E.2d 716, 720 (Ct. App. 2000).

Therefore, assuming further inquiry is necessary based on a polling of the jurors, it should be limited to issues raised, and only if those issues go to extraneous prejudicial information or internal deliberative processes that fit in the narrow category of fundamental fairness. In the event a juror's response to the polling necessitates additional inquiry, that inquiry should also assess whether there was prejudice under the law. *See Aldret*, 333 S.C. at 313-14, 509 S.E.2d at 312 (automatic reversal not required for either external influence nor internal juror misconduct, and burden is on defendant to show prejudice); *Zeigler*, 364 S.C. at 111-12, 610 S.E.2d 868-69 (even if jurors thought defendant should have testified none said that was the reason they found the defendant guilty).

Jurors should be required to stay until polling is completed, and be subject to recall in the event that development of additional issues during the evidentiary hearing require more inquiry as to specifics within the above-defined confines of the law.

2. Alternate, excused, or removed jurors

The State would first object to the testimony from any alternate or removed juror under Rules 401 to 403, SCRE, since they did not deliberate and thus were not part of the verdict under attack. Certainly, there is no relevance and any non-deliberating juror should not be allowed to speculate on the effect of any alleged external or internal conversation on jury deliberations or the verdict. *See also* Rule 606, SCRE.

In the event that a non-deliberating juror, [redacted], who was removed by Judge Newman for talking to [redacted] about the case in violation of the judge's instruction, is allowed to testify to alleged external influence because of developments during the polling and initial inquiry to the deliberative jurors, the State would seek to admit as an exhibit the entirety of the trial transcript containing the *in camera* examination of [redacted] as well as Judge Newman's ruling on the issue finding the juror should be removed for [redacted] violation of instructions.

The State would object under Rules 401-403, SCRE to any testimony from [redacted] as to [redacted] claims as to interactions with Clerk Hill, specifically as to paragraphs 3 through 11 but also any similar or related claims, because none of them involve alleged interaction with or discussion with any deliberating juror. *See also* Rule 606(b), SCRE.

The State would generally object to any hearsay from [redacted] claims about conversations [redacted] had after the trial with people such as [redacted]

Aside from the discussion of the issue in the transcript, the State would object to testimony regarding the so-called Facebook issue under Rules 401-403, SCRE, since Judge Newman did not rely upon it in excluding the juror.

Unless the proper foundation is laid and joined by any issue following polling of the deliberative jurors, the State would also generally object to discussion of these and similar issues from any removed or alternate juror, as the case may necessitate, as: (1) improper character evidence under Rule 404 and 405, SCRE, as any character trait is not pertinent; (2) Rule 608, SCRE (setting out proper impeachment and limiting the use of extrinsic evidence); Rule 609, SCRE (allowing impeachment for certain crimes for which a witness has been convicted); Rule 613, SCRE (setting forth foundational requirements for use of prior inconsistent statements); and Rule 801-804, SCRE (hearsay). This list is not intended to be exhaustive and will depend on how the testimony and evidence develops.

3. <u>Clerk of Court Hill</u>

Again, only if the initial polling of the jurors requires further inquiry, then Clerk Hill may be called to testify by either party depending on allocation of the burden.

Various allegations have been made involving the Clerk both in the defense motion and in public reporting. Some of these include supposed manufacturing of a Facebook post, supposed conversations with the removed [redacted] plagiarism as to the book about the trial, a wiretapping arrest of her son related to his county employment, and investigations into use of government office for private gain. Generally, again, the State would object to relevance under Rules 401-03, SCRE, to any testimony of or examination about any alleged conduct that occurred outside of the time period of the trial, and any conduct that does not involve interaction with a deliberative juror. For example, the Facebook issue was not relied upon by Judge Newman to exclude [redacted] and [redacted] claims as to conversations with Clerk Hill did not

involve any other deliberating juror. Any claims as to plagiarism or wiretapping or use of office for personal gain occurred after trial and are similarly irrelevant.

Unless the proper predicates exist or a foundation is laid, the State would generally object to examination of these and similar issues, as: (1) improper character evidence under Rule 404 and 405, SCRE, as any character trait is not pertinent; (2) Rule 608, SCRE (setting out proper impeachment and limiting the use of extrinsic evidence); Rule 609, SCRE (allowing impeachment for certain crimes for which a witness has been convicted); Rule 613, SCRE (setting forth foundational requirements for use of prior inconsistent statements); and Rule 801-804, SCRE (hearsay). This list is not intended to be exhaustive and will depend on how the testimony and evidence develops.

4. <u>Courthouse staff</u>

Again, only if the initial polling of the jurors requires further inquiry, then other courthouse staff, such as the jury coordinator, other clerks, and bailiffs, may be called to testify.

As before, the State would submit their testimony should be limited to allegations of extraneous influence or any other permissible juror inquiry, and as before, depending on whether proper predicates exist or a foundation is laid, the State would object to relevance under Rules 401-03, improper character evidence under Rules 404 and 504, improper impeachment under Rules 608, 609, and 613, and hearsay, among others, inasmuch as inquiry is sought into issues that do not directly address permissible issues regarding the deliberative jurors.

5. Other Witnesses

Other witnesses could become relevant, but depending on the nature of the inquiry and the issues joined after polling of the deliberative jurors. For example, Attorney Joe McCullouch was present as a media commentator but also represented [redacted] shortly after trial (if not before the end of trial), and may be relevant as to when the defense first became aware of these allegations. If the Facebook issue is deemed relevant, testimony from judicial or external witnesses may be necessary to explain the manner in which the issue arose. Similarly, testimony may be needed from the [redacted] as well as the person who sent the email upon hearing from a coworker that [redacted] was talking about the case and expressing an opinion during trial – which was why [redacted] was excluded. If the book issue is relevant testimony may be needed as to the manner in which that issue arose. Finally, SLED agents from the trial, into the allegations against [redacted] and from the investigation following the defense motion may need to be called depending on the evidence otherwise allowed.

6. Credibility

In the end, though, assuming there is inquiry beyond polling of the jurors, and conflicting evidence arises on the issues, including impeachment evidence, it will be for this Court to decide credibility and to determine based on those findings: (1) whether misconduct occurred, and (2) whether Murdaugh can show prejudice. *See State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999) (defendant must demonstrate prejudice from allegations of internal misconduct or external influence), *State v. Hunter*, 320 S.C. 85, 463 S.E.2d 314 (1995) (rejecting claims from juror about supposed racial bias and coercion, noting no evidence it affected the verdict and the juror agreed guilty was her

verdict when polled); *State v. Zeigler*, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005) (finding that although jurors submitted note asking defendants to testify, trial judge's charge and affidavits did not indicate any juror based the decision on a defendant's lack of testimony); *State v. Covington*, 343 S.C. 157, 539 S.E.2d 67 (Ct. App. 2000) (where there was conflicting information regarding whether extraneous information was brought to the jury about defendant, trial court properly resolved the credibility issues and found defendant failed to prove misconduct by either clear and convincing or preponderance); *State v. Franklin*, 341 S.C. 555, 324 S.E.2d 716 (Ct. App. 2000) (affirming trial court's rejection of claims from one juror about threats and verbal abuse from the others did not rise to the level of internal misconduct such as to raise a due process claim).

In the end:

> In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences. Unless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict. The trial court has broad discretion in assessing allegations of juror misconduct. Relevant factors to be considered in determining whether outside influences have affected the jury are the number of jurors exposed, the weight of the evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice. Generally, the determination of whether extraneous material received by a juror during the course of the trial is prejudicial is a matter for determination by the trial court.

State v. Kelly, 331 S.C. 132, 141–42, 502 S.E.2d 99, 104 (1998).

Here, [redacted] was removed prior to deliberation, the Judge properly instructed the jury, and the jurors all indicated guilty was their verdict after polling. There will be no credible evidence this verdict was based on anything but the evidence, law, and permissible argument at the trial.

b. PROCEDURAL ISSUES: the Court should receive all testimony in open court, not *in camera*, but with limitations on media recording and broadcasting of the images or names of the jurors.

There is a presumption of courtroom openness that applies to post-trial hearings involving allegations of alleged juror misconduct. *Ex parte The Greenville News, et. al.*, 326 S.C. 1, 482 S.E.2d 556 (1997). Restrictions on the general openness of the courts are allowed if essential to preserve higher values and they are narrowly tailored to serve that interest. *Id.*

In this case, some reasonable restriction on the general openness of the courts is necessary because of the unprecedented public interest in this case, and judicial interest in protecting these jurors from unreasonable intrusion and respecting their public service – particularly in a case as lengthy and complicated as this one. Like trial, arrangements should be made for the jurors to be able to report offsite and be transported to the courthouse by law enforcement or court personnel, so they will not have to walk through the public entrances where they may be filmed or approached by media or gallery members. Additionally, jury room(s) inaccessible to the public should be made available for the jurors during pendency of the hearing.

Any examination of the jurors during the hearing should be with any media and gallery members present under strict order not to record, photograph, report, or broadcast their faces or any potential identifying or private information. Cell phones or any other recording device should be prohibited from any gallery member in the court room except for legitimate media members approved by the Court. The only live video or audio feed allowed to be broadcast in real time should be from an approved pool feed, which should have safeguards built in including an appropriate delay with the pool feed provider under instructions to monitor and black out from broadcast any portion of

the feed inadvertently recorded which would violate these restrictions and the jurors' privacy. See generally Rule 605(f), SCACR (generally addressing trial court's discretion to control media presence in courtroom and providing that members of the jury should not be photographed, and requiring pooling arrangements when more than two media outlets have given notice).

If other witnesses become necessary, similar protection of their identities or some of their testimony may be necessary in order to protect the identities of the jurors.

Of course, the Court could and should exercise reasonable discretion to add or modify any restrictions as the hearing develops in order to protect the judicial interest in preventing unreasonable intrusions on juror privacy, while still honoring the general openness of matters occurring in court.

While subpoenas should be allowed in order to secure the attendance of jurors and other possible witnesses that may become necessary for the evidentiary hearing, depending again on this Court's decisions as to the manner of inquiry and the evidence that develops at the hearing, subpoenas beyond that for such things as jurors' phone records should not be allowed absent good cause shown. This Court always retains discretion to allow further inquiry depending on evidence that develops at the hearing, including supplemental productions or hearings if necessary.

{*Conclusion and signature on following page*}

CONCLUSION

WHEREFORE, the State respectfully requests that this Court deny Murdaugh's motion for a new trial or, barring that, convene an evidentiary hearing consistent with that conducted in *State v. Green* and, upon hearing the testimony of all twelve jurors who deliberated and witnesses presented, find Murdaugh's allegations to be not credible, find Murdaugh has failed to meet his burden of proof as to both the factual allegations and prejudice therefrom, and deny his motion for a new trial.

A list of potential witnesses and exhibits is sent separately as it contains sensitive identifying information.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

S. CREIGHTON WATERS
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By: s/ S. Creighton Waters
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

January 10, 2024

Evidentiary Hearing Witness List

Jurors

1. [redacted]
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.

Remaining Alternate

13. [redacted]

Excused

14. [redacted]
15.
16.
17.

Removed Juror

18. [redacted]

Courthouse Staff

19. [redacted] (Jury Coordinator)
20. [redacted] (Deputy Clerk)
21. [redacted] (Security Badges)
22. [redacted] Executive Assistant)
23. [redacted] (Horry Clerk)
24. [redacted] (Barnwell Clerk)
25. [redacted] (Old Clerk)
26. [redacted] (Bailiff)
27. [redacted] (Bailiff)
28. [redacted] (Bailiff)
29. [redacted] (Bailiff)
30. [redacted] (Bailiff)
31. [redacted] (Deputy Clerk)
32. [redacted] (CCSO)

Evidentiary Hearing Witness List

Other

33. [redacted] (Wife of Juror [redacted]
34. [redacted] (Dominos Lady)
35. [redacted] Attorney + Defense Media Commentator)
36. [redacted] (Judge Newman Law Clerk)
37. [redacted] (Attorney + Media Commentator)
38. [redacted] (Tenant of Juror [redacted]
39. [redacted] (Tenant of Juror [redacted]
40. [redacted] (Co-Author)
41. [redacted] (Photographer)
42. [redacted] (Ex-Husband of Juror [redacted]
43. [redacted] (Current Husband of Juror [redacted]
44. Admin Walterboro Word of Mouth Facebook Page

SLED - Trial

45. David Owen
46. Ryan Kelly
47. Peter Rudofski
48. Charles Ghent

SLED – Juror [redacted] nvestigation

49. Wayne Kirby
50. Shakera Shider

SLED – Motion for New Trial Investigation

51. Clemson Wright
52. Allison Davis
53. Paul Knight
54. Jacob McDaniel
55. Tiffany Tortorello
56. Benjamin Ross
57. Kyle Radford
58. Allison Fitzgerald

EXHIBITS

- The only exhibit the State presently intends to present is the trial transcript, with particular focus on relevant portions, such as but not limited to those cited in the State's Response to Defendant's Motion for a New Trial filed November 7, 2023.
- Any other exhibits would only be necessary as prior inconsistent statements, e.g. video recorded interviews of witnesses, written statements of witnesses, etc.