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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

COLLETON COUNTY
Court of General Sessions
The Honorable Jean Hoefer Toal, Chief Justice (Ret.)

Appellate Case No. 2024-000576

Richard Alexander Murdaugh.....Appellant,

v.

The State of South Carolina.....Respondent.

**APPELLANT RICHARD ALEXANDER MURDAUGH'S
MOTION FOR CERTIFICATION UNDER RULE 204(b), SCACR**

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, Petitioner Richard Alexander Murdaugh, through undersigned counsel, respectfully moves the Court to certify this case for review before it is determined by the Court of Appeals. This case concerns an issue of significant public interest and a legal principle of major importance warranting certification under Rule 204(b). The issue of significant public interest is whether the verdict returned after Mr. Murdaugh's internationally televised murder trial should be overturned due to unprecedented jury tampering by a state official, the former Colleton County Clerk of Court. The legal principle of major importance is whether it is presumptively prejudicial for a state official to secretly advocate for a guilty verdict through *ex parte* contacts with jurors during trial, or whether a defendant,

having proven the contacts occurred, must also somehow prove the verdict would have been different at a hypothetical trial in which the surreptitious advocacy did not occur.

I. Factual and Procedural Background

Mr. Murdaugh, once a prominent member of the South Carolina Bar, admittedly stole money from clients, his law firm and others to support a severe opioid addiction. His law firm confronted him about his thievery on September 3, 2021. He resigned from the firm and, after a failed suicide attempt assisted by his drug dealer, entered drug rehabilitation. He was arrested immediately upon leaving a rehabilitation facility and has been incarcerated ever since.

Three months earlier, on June 7, 2021, Mr. Murdaugh's wife, Maggie Murdaugh, and younger son, Paul Murdaugh, were brutally murdered at approximately 9 p.m. at the dog kennels on their rural family property in Colleton County. Mr. Murdaugh was indicted for the murders on July 14, 2022, and the trial commenced on January 23, 2023. The Honorable Clifton B. Newman presided. The State claimed Mr. Murdaugh was confronted at his law firm earlier that day about missing attorney's fees, and that he came home and killed his wife and son to distract a bookkeeper investigating those fees and to reduce his financial exposure in a negligent entrustment suit filed over two years earlier regarding a boat which Paul allegedly operated while intoxicated, resulting in the horrible death of a young woman. Mr. Murdaugh admits all allegations of theft against him, but vehemently denies murdering his family. There is no direct evidence of Mr. Murdaugh's guilt. There were no witnesses to the crime, no videos or photos of the crime occurring, no recovered murder weapons, no blood or DNA evidence establishing guilt. As Judge Newman stated during trial, "[t]his is a circumstantial case." Trial Tr. 2191:4–5.

After six weeks of trial, the case was submitted to the jury at about 3:45 pm on March 2, 2023. The verdict was returned early that evening. Jurors' television interviews indicate the actual

deliberations took less than one hour. Mr. Murdaugh timely appealed the verdict. That appeal is separate from the instant appeal. *State v. Murdaugh*, Appellate Case No. 2023-000392.

On August 1, 2023, the then-Colleton County Clerk of Court, Rebecca Hill, published a book, *Behind the Doors of Justice*, about Mr. Murdaugh's trial. She had been planning to write a book about the trial even before it began. Evid. H'rg Tr. 181:11–183:19 (**Exhibit A**). She repeatedly said that a guilty verdict would sell more books, and that she needed to sell books because “she needed a lake house.” *Id.* 181:20–183:1. The book caused some jurors to come forward to describe Ms. Hill's efforts to obtain her desired guilty verdict through jury tampering during trial. Jurors stated that after the State rested and the defense began its case, Ms. Hill entered the jury rooms often, telling jurors not to let the defense “throw you all off,” or “distract you or mislead you,” and telling them “not to be fooled” by Mr. Murdaugh's testimony in his own defense. *Id.* 52:7–18, 203:18–25, 209:25–210:18; Mot. New Trial Ex. A (Juror 630 Aff., Aug. 14, 2023) & Ex. H (Juror 785 Aff., Aug. 13, 2023) (**Exhibit B**); Juror 741 Aff., Jan. 29, 2024 (**Exhibit C**).

On September 5, 2023, Mr. Murdaugh filed a motion to suspend his appeal and for leave to file a motion for a new trial based on the evidence of Ms. Hill's jury tampering. The Court of Appeals granted the motion and Mr. Murdaugh filed his motion for a new trial on October 27. On November 1, he petitioned the Court for a writ of prohibition to prohibit Judge Newman from adjudicating the new trial motion, based on public statements Judge Newman made after the jury returned guilty verdicts. On November 15, the Court denied the petition as moot because Judge Newman recused himself from hearing the new trial motion. On December 18, the Chief Justice appointed retired Chief Justice Jean H. Toal to serve as the circuit judge hearing Mr. Murdaugh's motion for a new trial.

The circuit court ordered an evidentiary hearing and the parties submitted extensive briefing in advance of the hearing. Appellant’s Br. (**Exhibit D**); Resp’t’s Br. (**Exhibit E**); Appellant’s 2d Br. (**Exhibit F**); Resp’t’s 2d Br. (**Exhibit G**); Appellant’s Reply Br. **Exhibit H**). The circuit court held a “prehearing procedure” on January 16, 2024, to determine, *inter alia*, “[w]ho has the burden of proof in this matter, and what must be shown to meet that burden of proof, and what must then be shown to contest what has been shown and proved?” Prehearing Hr’g Tr. 3:1–2, 5:22–25 (**Exhibit I**). At the prehearing hearing, the circuit court ruled that Mr. Murdaugh bears the burden to prove actual prejudice in the verdict rendered. *Id.* 21:9–20. It further ruled Mr. Murdaugh would not be permitted to call any witnesses, including eyewitnesses to Ms. Hill’s jury tampering, or to examine any jurors called by the court. *Id.* 51:9–54:2. Instead, the circuit court would call and itself examine each juror; the only other witness would be Ms. Hill and any cross-examination of her would be strictly limited. *Id.* 41:22–42:2, 43:3–45:14, 46:25–51:7, 49:22–23.

On January 24, 2024, the circuit court communicated its proposed questions to jurors to the parties. Mr. Murdaugh’s counsel objected to the questions and to the rulings made at the prehearing hearing by letter dated January 25, 2024 (**Exhibit J**). The circuit court reconsidered its prior rulings and allowed Mr. Murdaugh to call the alternate juror and Barnwell County Clerk Rhonda McElveen and allowed the parties an opportunity for cross-examination of witnesses who were not deliberating jurors.

The evidentiary hearing was held on January 29, 2024. A single juror testified one business day earlier, on January 26, to accommodate a scheduling conflict. The jurors (identified by anonymous letters) testified as follows:

Jurors C, F, L, E, O, Y, W, Q, and K testified that they did not hear Ms. Hill comment on the merits of the case before the verdict.

Juror P testified that he heard Ms. Hill tell jurors, regarding Mr. Murdaugh's decision to testify in his own defense, to "watch his body language." Evid. Hr'g Tr. 77:22–78:7 (Ex. A). Juror P testified the comment did not affect his verdict.

Juror X testified that she heard Ms. Hill comment, regarding Mr. Murdaugh's decision to testify in his own defense, that it was rare for a defendant to testify in a criminal case and that "this is an epic day." *Id.* 23:9–24:3. Juror X testified the comments did not affect her verdict.

Juror Z testified that she heard Ms. Hill comment, regarding Mr. Murdaugh's decision to testify in his own defense, to watch Mr. Murdaugh's actions and to watch him closely. Juror Z testified that the comments did affect her verdict:

Q. All right. Was your verdict influenced in any way by the communications of the clerk of court in this case[?]

A. Yes, ma'am.

Q. And how was it influenced?

A. To me, it felt like she made it seem like he was already guilty.

Q. All right, and I understand that, that that's the tenor of the remarks she made. Did that affect your finding of guilty in this case?

A. Yes, ma'am.

Id. 46:6–15. The circuit court then examined Juror Z regarding her affidavit attached to Mr. Murdaugh's motion for a new trial, and she affirmed each paragraph therein. The circuit court then asked,

Juror Z, I asked you previously was your verdict on March 2, 2023, influenced in any way by communications from Becky Hill, the clerk of court. You answered that question yes. In light of what you said in the affidavit, which is:

I had questions about Mr. Murdaugh's guilt but voted guilty because I felt pressured by the other jurors.

Is that answer that I just read a more accurate statement of how you felt?

MR. HARPOOTLIAN: Object to the form, Your Honor.

THE COURT: Overruled.

A. Yes, ma'am.

Q. All right. So, you do stand by the affidavit?

A. Yes, ma'am.

Q. Very good.

After Juror Z left the courtroom, Mr. Murdaugh's counsel objected:

MR. HARPOOTLIAN: Your Honor, we objected to the questioning because this juror gave two statements under oath, one in an affidavit and one here to you today. The one here to you today was Becky Hill influenced her verdict.

THE COURT: Yes.

MR. HARPOOTLIAN: The one she gave in an affidavit six months ago was based on jurors. It could be both. Your Honor picked out the one in the affidavit from six months ago and said is that a more accurate statement. That presupposes and suggests to her what she should say. And we believe that this, this juror's testimony -- and, Your Honor, I'm afraid what you're going to say is, well, she said the affidavit was more accurate than what she testified under oath here today and, therefore, I'm not going to consider her testimony, and I think that's where we're heading here.

I'd ask you to bring her back in, explain to her there's nothing wrong with it both being true.

THE COURT: I decline to do that and overrule the objection.

Later during the hearing, Juror Z, through her own counsel, provided an affidavit averring,

1. I would like to clarify my testimony today.
2. As I testified, I felt influenced to find Mr. Murdaugh guilty by reason of Ms. Hill's remarks, before I entered the jury room.

3. Once deliberations began as I stated in paragraph 10 of my earlier affidavit, I felt further, additional pressure to reach the guilty verdict.

Juror Z Aff., January 28, 2024 (**Exhibit K**). Although the circuit court introduced Juror Z's prehearing affidavit into evidence on its own motion, it refused to allow Juror Z's affidavit of that day into evidence or to allow any further testimony from Juror Z.

Ms. Hill testified after the jurors. She denied engaging in any jury tampering. She also denied stating that she wanted a guilty verdict to promote book sales. She admitted she plagiarized portions of her book and that her profits from its sale in the six months before it was withdrawn from publication because of her plagiarism were approximately \$100,000. Evid. Hr'g Tr. 133:8–12 (Ex. A). She admitted the book contained unfounded statements included for “poetic license” or “literary ease.” *Id.* 125:18–20, 137:17–19. Examination by the circuit court revealed that Ms. Hill's denial, during direct examination, of questioning a juror during the murder trial was not truthful, and that she did want a guilty verdict. *Id.* 146:18–159:3.

Barnwell County Clerk of Court Rhonda McElveen testified next to rebut Ms. Hill's denial that she wanted a guilty verdict to promote book sales. Ms. McElveen was assisting in the courtroom during the murder trial. She testified,

Q. And did she discuss with you -- what, if anything, did she discuss with you about how she felt the verdict should turn out to be in the Murdaugh trial vis a vis in reference to the book, what would help the book?

A. A guilty verdict.

Q. Tell the judge and, and me what exactly she said to you that you remember. This is prior to the trial.

A. Okay. Well, first of all, she said we might want to write a book because she needed a lake house and I needed to retire, and from then, further conversation was that a guilty verdict would sell more books, and we left it at that. This was before even in December.

Q. And, and when, when -- did she ever say that again to you during this -- the, the weeks you spent there?

A. Several times. It could be said -- it was, you know, amongst friends in her office or we might be having dinner, that kind of stuff, but that's about it.

Q. That she needed a guilty verdict to sell more books?

A. That would be the best way to sell books, yes, sir.

Q. The best way to sell books.

Now, during this -- during this process, did she ever express to you an opinion on whether or not, in fact, was Mr. Murdaugh guilty of the murders of his son and his, his wife?

A. Yes, sir.

Q. Tell me. Tell me what she said and if you remember when.

A. I don't exactly remember when. I know it's over half of the trial had already happened, but the evidence was coming forth that it looked like he might be guilty. She made a comment that guilty verdict would be better for the sale of books.

Id. 181:20–183:1. She also testified that Ms. Hill made comments to her, like “[d]on’t be fooled by the evidence presented by Mr. Murdaugh’s attorneys,” identical to statements reported by some jurors. *Id.* 184:25–185:18. And she testified that Ms. Hill insisted on allowing a book writer (who wrote the forward to Ms. Hill’s book) to sit in the well of the court during trial, where she could see sealed exhibits, under the subterfuge of being a Sunday school teacher. *Id.* 186:12–190:10.

The final witness was the alternate juror, Juror 741. She testified that Ms. Hill told jurors “the defense is about to do their side” and “[t]hey’re going to say things that will try to confuse you” but “[d]on’t let them confuse you or convince you or throw you off.” *Id.* 203:18–204:3.

At the conclusion of the hearing, the circuit court ruled from the bench:

Did Clerk of Court Hill make comments to any juror which expressed her opinion what the verdict would be? Ms. Hill denies [doing so] and so the question becomes was her denial credible.

I find that the clerk of court is not completely credible as a witness. Ms. Hill was attracted by the siren call of celebrity. She wanted to write a book about the trial and expressed that as early as November 2022, long before the trial began. She denies that this is so, but I find that she stated to the clerk of court Rhonda McElveen and others her desire for a guilty verdict because it would sell books. She made comments about Murdaugh's demeanor as he testified, and she made some of those comments before he testified to at least one and maybe more jurors.

...

The clerk of court allowed public attention of the moment to overcome her duty.

Id. 251:13–252:1, 23–24.

The circuit court nevertheless denied the motion for a new trial, reasoning that there is no presumption of prejudice from tampering with jurors during a trial about the matter pending before the jury and Mr. Murdaugh failed to prove that Ms. Hill's comments actually changed the jury's verdict. The circuit court discounted the testimony Juror Z, who said Ms. Hill's comments did affect her verdict, because she "was ambivalent in her testimony." *Id.* 252:13. In a State-drafted written order entered 66 days after the ruling from the bench, the circuit court further ruled in passing that "this Court also find[s] that any possible presumption of prejudice was overcome," without any reference to any evidence presented at the evidentiary hearing. Order 24, Apr. 4, 2024 (**Exhibit L**). Mr. Murdaugh timely appealed the order on April 11.

On March 25, 2024, Ms. Hill resigned from office. In May 2024 it was reported that the State Ethics Commission had referred ethics complaints against her for criminal prosecution.

II. Legal Standard

Rule 204(b) of the South Carolina Appellate Court Rules provides,

(b) Certification by Supreme Court. In any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals. Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance. The effect of

such certification shall be to transfer jurisdiction over the case to the Supreme Court for all purposes.

III. Argument

The circuit court erred when denying Mr. Murdaugh’s motion for a new trial by ruling that South Carolina courts should disregard binding precedent of the U.S. Supreme Court. In *Remmer v. United States*, the U.S. Supreme Court held (unanimously) that in a criminal case, any “tampering . . . with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial” and “the burden rests heavily upon the Government to establish . . . that such contact with the juror was harmless.” 347 U.S. 227, 229 (1954). The Fourth Circuit holds *Remmer* is “clearly established federal law.” *Barnes v. Joyner*, 751 F.3d 229, 243 (4th Cir. 2014). The circuit court however ruled that *State v. Green*, 432 S.C. 97, 851 S.E.2d 440 (2020), directs South Carolina courts to ignore *Remmer*:

THE COURT: [The] South Carolina Supreme Court said very clearly we do not go by the guidance of the 1950s case of *US v. Remmer*.

MR. HARPOOTLIAN: That’s -- we do not believe that’s what Justice Kittredge has said in [*State v. Green*] ---

THE COURT: He said it straight out as clear as a bell can be, but I’ve ruled on that. Evid. Hr’g Tr. 100:19–25 (Ex. A).

The Court however has not split with the Fourth Circuit to instruct South Carolina courts to disregard *Remmer*. In *Green* the Court merely “decline[d] to adopt the *Remmer* presumption of prejudice in every instance of an inappropriate bailiff communication to a juror” because “not every inappropriate comment by a bailiff to a juror rises to the level of constitutional error,” including the inappropriate comments at issue in *Green*, which “did not touch the merits, but dealt only with the procedural question of how the judge might handle a jury impasse that apparently never materialized.” 432 S.C. at 100–01, 851 S.E.2d at 44. *Green* accords perfectly with recent

Fourth Circuit authority: Under *Remmer* “any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is deemed presumptively prejudicial,” but “[t]o trigger this presumption, a defendant must introduce ‘competent evidence of extrajudicial juror contacts’ that are ‘more than innocuous interventions.’” *United States v. Elbaz*, 52 F.4th 593, 606 (4th Cir. 2022) (internal quotation marks omitted), *cert. denied*, 144 S. Ct. 278 (2023).

If the *Remmer* presumption of prejudice ever applies, it must apply where, as here, an elected state official advocates for a guilty verdict in the jury room during trial so that she can personally profit from selling books about the trial. That is not an “innocuous intervention.” At the evidentiary hearing, the State failed to meet its heavy burden to overcome the presumption that Ms. Hill’s conduct was prejudicial to Mr. Murdaugh’s right to a fair trial before an impartial jury that considers only the evidence and argument presented in open court. It did not even try to argue any presumption was overcome. *See, e.g.*, Evid. Hr’g Tr. 230:18–239:19 (closing argument of S. Creighton Waters for the State).

The circuit court nonetheless held that Ms. Hill’s jury tampering could not “in any way undermine the fairness and impartiality of [the] six-week trial with its extensive evidentiary presentations, arguments from counsel, and instructions from the trial court” and “any possible presumption of prejudice was overcome by these facts.” Order 24 (Ex. L). That holding is both unsound and revealing. It is unsound in that it considers only the evidence against Mr. Murdaugh presented to the jury at trial but not any evidence presented to the court about Ms. Hill’s tampering with the jury. It is revealing in that it shows the circuit court misapprehended the issue before it. The prejudice at issue, whether it is presumed or must be proven, is not an incorrect verdict. Jury tampering is prejudicial if it denies the accused a fair trial. The strength of the State’s evidence

against the accused cannot cure the denial of his right to a fair trial. *See, e.g., Parker v. Gladden*, 385 U.S. 363, 363–65 (1966) (reversing the Supreme Court of Oregon, where a bailiff told a juror in a murder trial “that wicked fellow, he is guilty,” and the state supreme court had held the statement did not require a new trial because it was not shown its prejudiced the outcome of the trial, holding “[t]he evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel” which “are among the fundamental requirements of a constitutionally fair trial”); *see also, e.g., Neder v. United States*, 527 U.S. 1, 34 (1999) (Scalia, J., concurring in part) (noting that even if “the judge certainly reached the ‘right’ result,” “a directed verdict against the defendant . . . would be *per se* reversible *no matter how overwhelming the unfavorable evidence*,” because “[t]he very premise of structural-error review is that even convictions reflecting the ‘right’ result are reversed for the sake of protecting a basic right” (emphasis in original))

But the present motion does argue the errors of the circuit court’s decision. This motion merely argues that it decided a matter of major public interest and a legal principle of major importance, justifying immediate review by this Court. On this point, Appellant and Chief Justice Toal may agree: “these matters are best disposed of by the trial judge in a very timely manner so that you may then go to the authorities that really count more than I do. That is the appellate authorities who will decide what the standard in this particular matter is.” Evid. H’rg Tr. 254:24–255:4 (Ex. A).

A. Whether Mr. Murdaugh should be retried due to deliberate jury tampering by an elected state official, acting for personal financial gain, is a matter of significant public interest.

Public interest in the Murdaugh case has been extraordinary. Mr. Murdaugh’s trial likely was the most high-profile trial in the history of South Carolina. While there have been trials in

this state for arguably worse crimes (*e.g.*, Dylann Roof, Timothy Jones, Susan Smith, Donald “Pee Wee” Gaskins), those persons confessed to their crimes and were never prominent members of the community, and interest in their cases was more focused on the details of their horrific crimes than the operation of the resulting judicial proceedings. Mr. Murdaugh’s case, however, has created intense interest in our state’s judicial proceedings. Mr. Murdaugh is a fourth-generation son of what for over a century was one of the state’s most prominent legal families, and he himself was once president of the South Carolina Trial Lawyers Association. “For many South Carolinians, the interest comes from a strong desire to see justice served to a well-connected man who has only recently acknowledged lies and abuses of power that long went unchecked.” James Pollard, *What the Alex Murdaugh murder trial says about the human psyche*, L.A. Times, Mar. 2, 2023. Additionally, the unusual, mysterious, sometimes bizarre and continually evolving facts of this case have created unique interest in Mr. Murdaugh’s court proceedings:

South Carolina state Rep. Tommy Pope, who was the lead prosecutor in the Smith case, said he thinks people are drawn to the Murdaugh saga because of its “truth is stranger than fiction” aspects.

“It’s like a soap opera, but it’s really happening with real people,” said Pope, adding, “This is not entertainment. It is a tragedy and lives were lost.”

Pope said the Murdaugh case offered an opportunity to educate the public about the justice system. As an analyst on Court TV during the trial, Pope said the gavel-to-gavel coverage probably helped viewers reach their own conclusions and understand the legal system’s “positives” as well as its “warts.”

Id.

Of course, Ms. Hill’s participation in the trial turned out to be the biggest “wart” of all. It appears nothing like her misconduct has ever happened before. The cases cited in the circuit court’s order involving external influences on jurors during trial dealt with minor things like a pamphlet left in the jury room, or an alternate juror mistakenly and briefly being left with the jury

after deliberations began, or one-off inappropriate comments by bailiffs to jurors that did not directly relate to the merits of the case before them. *E.g.*, *Green*, 432 S.C. 97, 851 S.E.2d 440; *State v. Grovenstein*, 335 S.C. 347, 517 S.E.2d 216 (1999); *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998); *Blake by Adams v. Spartanburg Gen. Hosp.*, 307 S.C. 14, 413 S.E.2d 816 (1992).¹ None of those hiccups comes close to the elected state official in charge of managing juries engaging in deliberate jury tampering in a murder trial to secure a guilty verdict so she can make money selling books about it.

Ms. Hill's conduct was the subject of a hearing presided over by a former Chief Justice on live television. At that hearing, it was found that Ms. Hill planned to publish a book from the beginning, that she wanted a guilty verdict to boost book sales, that she did engage in jury tampering advocating a guilty verdict, and she did subsequently publish the book for a profit of over \$100,000. Ms. Hill has since been publicly accused of many crimes, some relating to the trial and others involving separate misconduct in office, and she has resigned in disgrace. But, as the circuit court stated at the conclusion of the hearing, the question of greatest public interest, whether Ms. Hill's unprecedented misconduct taints the verdict rendered in the highest-profile trial in South Carolina history, has yet to be decided by "the authorities that really count . . . [t]hat is the appellate authorities who will decide what the standard in this particular matter is." Evid. Hr'g Tr. 255:2-4 (Ex. A). And as Mr. Pope said, this case is teaching the public how South Carolina's legal system deals with its "warts." Does it cut them away, however painful it might be, to cure them, or does

¹ One case cited, *State v. Rowell*, 75 S.C. 494, 56 S.E. 23 (1906), dealt with a constable who made a comment on the merits overheard by a juror at a hotel where the jury was being held. But that case predates by several decades both *Remmer* and *Parker v. Gladden's* incorporation of the Sixth Amendment right to an impartial jury to the states through the Fourteenth Amendment.

it apply makeup to conceal them and learn to live with them? That is a matter of “significant public interest” for this Court to decide. *See* Rule 204(b), SCACR.

B. Whether it presumptively prejudicial for a state official to secretly advocate for a guilty verdict through *ex parte* contacts with jurors during trial, or whether the Court has adopted the minority position in a federal circuit split in opposition to the Fourth Circuit to hold the defendant must also prove the verdict would have been different had the contacts not occurred, is a legal principle of major importance.

Additionally, the Court should certify this appeal because it presents a legal principle of major importance independent of public interest in the facts of the case. Under *Remmer*, any “tampering . . . with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial” and “the burden rests heavily upon the Government to establish . . . that such contact with the juror was harmless.” 347 U.S. at 229. But the circuit court held that when there is tampering with a juror during a trial about the matter pending before the jury, prejudice is never presumed but instead always must be proven by the defendant. Prehearing Hr’g Tr. 20:25–21:20 (Ex. I); Order 4–5 (Ex. L). On that issue there is a three-way federal circuit split. The First, Second, Third, Fourth, Seventh, Ninth, Eleventh, and D.C. Circuits and at least 28 states presume prejudice under *Remmer*, although many, like the Fourth Circuit (and as this Court appeared to do in *Green*) decline to apply it categorically to “innocuous” contacts with jurors. *E.g.*, *United States v. Pagán-Romero*, 894 F.3d 441, 447 (1st Cir. 2018) (“It is now well established that less serious instances of potential taint should be addressed using the abuse-of-discretion standard, with the presumption of prejudice being reserved for more serious instances.”); *United States v. Greer*, 285 F.3d 158, 173 (2d Cir. 2002) (“It is well-settled that any extra-record information of which a juror becomes aware is presumed prejudicial.”); *United States v. Claxton*, 766 F.3d 280, 299 (3d Cir. 2014) (“[A]ny private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is . . . deemed presumptively prejudicial.”); *Barnes*, 751 F.3d at 245 (4th Cir. 2014); *United States v.*

Turner, 836 F.3d 849, 867 (7th Cir. 2016) (“[I]n a criminal case, any private communication . . . with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial.”); *Godoy v. Spearman*, 861 F.3d 956, 968 (9th Cir. 2017) (“Once a defendant shows a possibly prejudicial contact, the presumption of prejudice attaches, and the burden shifts to the state to prove the contact was harmless.”); *Ward v. Hall*, 592 F.3d 1144, 1180 (11th Cir. 2010) (“[E]xposure [to extraneous information] is presumptively prejudicial.”); *United States v. Gartmon*, 146 F.3d 1015, 1028 (D.C. Cir. 1998) (“But notwithstanding the view of the Sixth Circuit that *Remmer* is no longer controlling . . . many of our cases have continued to recognize the presumption of prejudice and to place the burden of disproving it on the government.”). The Fifth, Sixth, and Tenth Circuits and at least fourteen states decline to apply *Remmer* and instead require defendants to prove prejudice, as the circuit court held. *E.g.*, *United States v. Sylvester*, 143 F.3d 923, 934 (5th Cir. 1998) (“[W]e reject the *Remmer* presumption”)²; *United States v. Lanier*, 988 F.3d 284, 295 & n.13 (6th Cir. 2021) (noting the Sixth Circuit “places on the defendant the burden of proving bias at the *Remmer* hearing”); *United States v. Barrett*, 496 F.3d 1079, 1102 (10th Cir. 2007) (“[T]he defendant must . . . demonstrate that an unauthorized contact created actual juror bias; courts should not presume that a contact was prejudicial.” (internal quotation marks omitted)). The Eighth Circuit and at least seven states leave the question to judicial discretion. *E.g.*, *United States v. Hall*, 877 F.3d 800, 806 (8th Cir. 2017)

² The Fifth Circuit may have since moved back to the majority position. *See United States v. Jordan*, 958 F.3d 331, 335 (5th Cir. 2020) (“To be entitled to a new trial based on an extrinsic influence on the jury, a defendant must first show that the extrinsic influence likely caused prejudice” and “[t]he government then bears the burden of proving the lack of prejudice.”)

(“We give the district court broad discretion to grant or deny a motion for mistrial because it is in a far better position to weigh the effect of any possible prejudice.”).³

The question driving the split is whether *Remmer* was narrowed or overruled by later U.S. Supreme Court cases, *Smith v. Phillips*, 455 U.S. 209 (1982) and *United States v. Olano*, 507 U.S. 725 (1993). See, e.g., *Sylvester*, 143 F.3d at 934 (“We agree that the *Remmer* presumption of prejudice cannot survive *Phillips* and *Olano*.”); *United States v. Pennell*, 737 F.2d 521, 532 (6th Cir. 1984) (“We conclude that *Phillips* has indeed altered the law concerning unauthorized communications with jurors.”). In *Phillips*, a juror applied for employment with the district attorney’s office during trial, but the prosecution did not disclose the fact until after the trial. 455 U.S. at 213–14. In *Olano*, the trial court permitted alternate jurors to attend but not participate in jury deliberations. 507 U.S. at 728–29. In each case the Supreme Court held that a new trial was not required. But neither case involved an external influence on the jury from anyone other than alternate jurors. Both cases cited *Remmer* with approval. *Olano*, 507 U.S. at 738; *Phillips*, 455 U.S. at 215. *Olano* even stated “[t]here may be cases where an intrusion should be presumed prejudicial,” citing *Turner v. Louisiana*, 379 U.S. 466 (1965), as an example of such a case. 507 U.S. at 739. In *Turner*, prejudice was presumed where the jury was in the charge of sheriff’s deputies who were also prosecution witnesses, a fact pattern with a close similarity to the present case.⁴ 379 U.S. at 474.

The State nevertheless argued *Remmer* was abrogated by *Smith* and *Olano*. Resp’t’s 2d Br. 6 (“*Smith* . . . abrogates *Remmer* to the extent which it may be relied upon for the proposition that

³ The number of states listed in this three-way split sum to 49. The missing state is South Carolina; where it falls in the split is the question Appellant asks the Court to answer.

⁴ Like the deputies in *Turner*, Ms. Hill had the jury in her charge. She was not a prosecution witness, but like a prosecution witness she made statements to the jury advocating a guilty verdict.

prejudice must be presumed where external influences are brought upon the jury”) & 7 (quoting the Fifth Circuit’s *Sylvester* decision holding *Olano* abrogated *Remmer*). The circuit court agreed, ruling from the bench:

I am not conducting a *Remmer* hearing. *Remmer* is a 1954 decision of the United States Supreme Court that deals with question of influence of the jury and a motion for a new trial on the basis of after-discovered evidence of that influence. I rely on the South Carolina decision of our Supreme Court authored by Justice Kittredge, *State v. Green*, and the *Green* decision specifically says that *Remmer* is not the guidance that South Carolina trial judges should look to in conducting hearings on after-discovered evidence.

Prehearing Hr’g Tr. 11:1–10 (Ex. I); *see also* Evid. Hr’g Tr. 100:19–21 (Ex. A) (“[The] South Carolina Supreme Court said very clearly we do not go by the guidance of the 1950s case of *US v. Remmer*.”). Its State-drafted order entered months after the evidentiary hearing, however, hides its reasoning, stating only that “Murdaugh argues . . . prejudice must be presumed under *Remmer*” while the State “argues that the overwhelming weight of South Carolina case law is clear that . . . the burden is on the defendant to show not only that the improper influence occurred but also resulting prejudice.” Order 4–5 (Ex. L). The order then proceeds to review South Carolina cases, some of which are arguably irrelevant (*e.g.*, cases dealing with external influences not touching on the merits of the case before the jury or alternate jurors participating in deliberations) and some of which are inarguably irrelevant (*e.g.*, cases dealing with internal jury influences),⁵ without attempting to explain why a U.S. Supreme Court decision on a question of federal constitutional law directly on point on the facts of the case is not good law. *Id.* 5–8.

But the Fourth Circuit’s contrary position could not be clearer:

Some courts have suggested that post-*Remmer* developments—*Smith v. Phillips*, 455 U.S. 209, 215 (1982), *United States v. Olano*, 507 U.S. 725, 738–39 (1993), and Federal Rule of Evidence 606(b)—narrowed or overturned *Remmer*’s

⁵ The *Remmer* presumption does not apply to internal influences on the jury. *Barnes*, 751 F.3d at 245–46.

presumption of prejudice. *See, e.g., United States v. Sylvester*, 143 F.3d 923, 934 (5th Cir. 1998) (“[T]he *Remmer* presumption of prejudice cannot survive *Phillips* and *Olano*.”). But the Fourth Circuit continues to adhere to a *Remmer* presumption when the contact goes beyond the innocuous. *United States v. Cheek*, 94 F.3d 136, 141 (4th Cir. 1996).

United States v. Elbaz, 52 F.4th 593, 606 n.9 (4th Cir. 2022), *cert. denied*, 144 S. Ct. 278, 217 L. Ed. 2d 126 (2023) (parallel citations omitted). *See also United States v. Johnson*, 954 F.3d 174, 179–80 (4th Cir. 2020) (holding that where “an unauthorized contact was made” with jurors “of such a character as to reasonably draw into question the integrity” of the trial proceedings, the defendant “is entitled under *Remmer*: (1) to a rebuttable presumption that the external influence prejudiced the jury’s ability to remain impartial” (internal quotation marks omitted)); *Barnes*, 751 F.3d at 243 (holding *Remmer* is “clearly established federal law”); *United States v. Lawson*, 677 F.3d 629, 642 (4th Cir. 2012) (“At issue in this debate are the Supreme Court’s decisions in *Smith v. Phillips* and *United States v. Olano* This Court’s decisions addressing such external influences on a jury’s deliberations reflect that the *Remmer* rebuttable presumption remains [a]live and well in the Fourth Circuit.” (citations omitted)). “To determine whether a contact with a juror is innocuous or triggers the *Remmer* presumption we look to whether there was (1) any private communication; (2) any private contact; (3) any tampering; (4) directly or indirectly with a juror during trial; (5) about the matter before the jury.” *Elbaz*, 52 F.4th at 607 (internal quotation marks omitted).

Two years before the Fourth Circuit’s *Elbaz* decision (the most recent published decision affirming *Remmer*), the Court in *Green* considered a case in which a juror asked a bailiff what would happen if the jury deadlocked, and the bailiff responded that the judge probably would give an *Allen* charge and ask them to stay later. The Court held,

The trial court questioned each juror and the bailiff, which proved “there was no reasonable possibility the [bailiff’s] comments influenced the verdict.” Our unwillingness to categorically apply the *Remmer* presumption of prejudice stems

from our view that not every inappropriate comment by a bailiff to a juror rises to the level of constitutional error. In *Remmer*, a juror was approached by a “person unnamed” and told “that [the juror] could profit by bringing in a verdict favorable to the [defendant].” The federal district court, without holding a hearing, denied the defendant’s motion for a new trial. Ultimately, the Supreme Court recognized the presumption of prejudice from the highly improper juror contact and remanded to the federal district court “to hold a hearing to determine whether the incident complained of was harmful to the [defendant].”

The attempted bribery of a juror in *Remmer*—conduct which goes to the heart of the merits of the case on trial—is a far cry from the circumstances presented in this case. The bailiff’s actions here—though improper—did not touch the merits, but dealt only with the procedural question of how the judge might handle a jury impasse that apparently never materialized.

432 S.C. at 100, 851 S.E.2d at 441 (2020) (citations omitted). The circuit court read that language to hold that South Carolina courts never apply the *Remmer* presumption of prejudice in any circumstances. Prehearing Hr’g Tr. 11:1–10 (Ex. I); Evid. Hr’g Tr. 100:19–21 (Ex. A). *Green* is the only reported South Carolina appellate decision discussing *Remmer*.⁶ The question in the instant appeal is whether the Court’s *Green* decision indeed split from the Fourth Circuit and determined *Remmer* has been abrogated or overruled by subsequent cases. This is of major legal importance for at least two reasons.

First, the circuit court’s reading of the Court’s recent *Green* decision is plainly erroneous. “While we decline to adopt the *Remmer* presumption of prejudice in every instance of an inappropriate bailiff communication to a juror” does not mean “we decline to adopt the *Remmer* presumption of prejudice in *any* instance of inappropriate communication to a juror,” nor does “[o]ur unwillingness to categorically apply the *Remmer* presumption of prejudice stems from our view that not every inappropriate comment by a bailiff to a juror rises to the level of constitutional error” mean “no inappropriate comment to a juror ever rises to the level of constitutional error.”

⁶ The only other South Carolina appellate case citing *Remmer* is *State v. Bryant*, 354 S.C. 390, 395, 581 S.E.2d 157, 160 (2003), which cites *Remmer* once in a string cite without any discussion.

Green, 432 S.C. at 100–01, 851 S.E.2d at 441. A more reasonable reading is that the Court’s opinion is identical to the Fourth Circuit’s opinion expressed in *Elbaz* two years later: prejudice is presumed unless the contact is “innocuous” or does not “touch the merits.” *Compare* 52 F.4th at 606 with *Green*, 432 S.C. at 100, 851 S.E.2d at 441. That is also consistent with the earlier Court of Appeals decision in *State v. Cameron*, which held,

In this case, there was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained. When there has been such a communication, 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.

311 S.C. 204, 208, 428 S.E.2d 10, 12 (Ct. App. 1993).⁷ The circuit court refused to consider *Cameron* because it was a Court of Appeals decision, Prehearing Hr’g Tr. 21:25–22:3 (Ex. I) (“I do not regard *State v. Cameron* as the guidance that needs to be used by me in making a determination about this case. It’s a Court of Appeals case.”), and because, in its view, the later *Green* decision held *Remmer* is no longer good law, *id.* 22:3–10. But no matter how erroneous and unpersuasive Chief Justice Toal’s reading of *Green* may be, her stature as a jurist and the intense publicity surrounding her decision means her reading of *Green* is a uniquely precedential circuit court opinion that will guide South Carolina courts unless this Court corrects it.

Second, a state splitting from its home federal circuit on a question of federal law is an issue of major legal significance, and doing so on a question of criminal law is especially

⁷ Similarly, in *Bryant*, the only South Carolina case other than *Green* to cite *Remmer*, the Court held the defendant must prove “actual juror bias,” which he did by proving “the questioning of jurors’ family members by Horry County Police detectives in a case in which the victim was a Horry County Police Department Officer was, at minimum, an attempt to influence the jury” that “could have been perceived as an attempt to intimidate jurors.” 354 S.C. at 395, 581 S.E.2d at 160–1 (2003). That jury intimidation was the actual prejudice the defendant had the burden to prove. There was no suggestion that having proven law enforcement officers engaged in jury intimidation, the defendant then needed to prove what the verdict would have been but for the intimidation.

important. It is so important it should only be done by the state's highest court after careful consideration. "[T]his Court often defers to Fourth Circuit decisions interpreting federal law" but "it is not obligated to do so" where there is "lack of uniformity amongst the federal circuits." *Limehouse v. Hulsey*, 404 S.C. 93, 108–09, 744 S.E.2d 566, 575 (2013). As noted above, there is a federal circuit split on the continued viability of *Remmer*. This Court is not obligated to follow the Fourth Circuit in that circuit split, but there are strong legal and prudential reasons to do so.

Certainly, South Carolina courts are not required to follow the reasoning of the Fourth Circuit when it is an outlier, like children following the pied piper of Hamelin. But the Fourth Circuit's position accords with the majority of federal circuits and the majority of states. At least 35 federal appellate courts and state appellate courts of last resort agree with the Fourth Circuit that the *Remmer* presumption still applies to external communications with the jury during trial about the merits of the case before them. This Court should join them. Although South Carolina's courts are not subject to the mandate of the U.S. Court of Appeals for the Fourth Circuit, the South Carolina's executive officers having custody of prisoners in this state are subject to the writs of the courts of the Fourth Circuit. South Carolina courts must follow what the Fourth Circuit says is "clearly established" federal law regarding the rights of criminal defendants or federal courts in the Fourth Circuit will grant writs of habeas corpus. *See* 28 U.S.C. § 2254(d)(1) (providing for a habeas writ where state court proceedings "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States").

In other words, South Carolina courts are powerless to enforce their own opinions on questions of federal constitutional law in criminal cases where those opinions differ from the Fourth Circuit, and splitting from the Fourth Circuit in such cases essentially is an act of advocacy.

If South Carolina believes the Fourth Circuit is incorrect on a question of criminal defendants' federal constitutional rights, it is better for South Carolina's Attorney General to convince the U.S. Supreme Court of that than to place South Carolina judges in the position of advocating against the reasoning of federal judges on questions of federal constitutional law.

Possibly, the Attorney General would succeed, and this case would be the vehicle for overturning *Remmer*. Or perhaps the Supreme Court would decide Ms. Hill's egregious jury tampering does not present an attractive vehicle for changing the legal standard for a mistrial, because common sense says that when an elected state official goes into the jury room during a murder trial to advocate for a guilty verdict because she wants to make money selling books about the guilty verdict, the result should be a mistrial. Regardless, the Supreme Court is the proper court to decide whether most federal circuit courts have misunderstood Supreme Court precedent. South Carolina courts should follow what federal courts having jurisdiction over South Carolina have held is "clearly established" federal law and leave advocacy for changing that law to the Attorney General and his able deputy. The circuit court's refusal to do so presents a legal issue of major significance necessitating review of this appeal by this Court before it is determined by the Court of Appeals.

IV. Conclusion

For the foregoing reasons, Appellant respectfully requests the Court certify this case for review before it is determined by the Court of Appeals.

Respectfully submitted,

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July 9, 2024.

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT A

(Evidentiary Hearing Transcript)

State of South Carolina) In the Court of General Sessions
County of Colleton) Fourteenth Judicial Circuit
2022-GS-15-0592
2022-GS-15-0593
2022-GS-15-0594
2022-GS-15-0595

The State of South Carolina,)
vs.) Transcript of Record
Richard Alexander Murdaugh.)
_____)

January 26, 29, 2024
Columbia, South Carolina

B E F O R E:

The Honorable Jean H. Toal, Judge

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Certificate of Merit

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1 FRIDAY, JANUARY 26, 2024

2 THE COURT: Welcome, ladies and gentlemen. This is
3 the matter of *State v. Richard Alexander Murdaugh*,
4 2022-GS-15-00592, 593, 594, 595. This is an evidentiary
5 hearing with respect to defendant's motion for a new trial,
6 which has been remanded to this court from the Court of
7 Appeals where the matter is on appeal, paused for the
8 conduct of this hearing.

9 I've got a couple of preliminary things that I'm going
10 to say to our friends in the press. Then I've got some
11 things that I want to say to you as counsel, and then we'll
12 proceed with the examination of the juror.

13 Members of the press, as I explained earlier, this
14 procedure is unique in that typically issues like this are
15 raised immediately after the rendering of a verdict, and we
16 are now almost a year post verdict in this matter, which
17 makes this a very unusual situation for you and for me to
18 preside over.

19 The defense has asked the jurors be sequestered prior
20 to giving testimony for this motion. To accommodate that
21 request and to accommodate an unavoidable schedule conflict
22 for one juror, that juror is being examined today; the
23 remaining jurors will be examined Monday.

24 Under South Carolina law, particularly *State v.*
25 *Sinclair*, the examination today could take place outside of

1 public view and a transcript released at a later time. As
2 a compromise, I am examining one juror today. I have
3 previously had an off-the-record consultation with members
4 of the press, and I am now going to put on the record what
5 I have discussed.

6 I have asked that the gender of the juror, the
7 questions asked, and the juror's response not be reported
8 until after this court convenes on Monday at 9:30 AM for
9 the examination of the balance of the jurors and the clerk
10 of court. The press term is embargo, I think, but what I
11 am asking is that these questions and answers and the
12 gender of the juror be embargoed until 9:30 on Monday.

13 I deeply appreciate the cooperation of the media about
14 this. Their behavior has been exemplary throughout. I am
15 very pleased and grateful for the participation of Jay
16 Bender as the media coordinator for this matter, completely
17 voluntary and without pay.

18 And, Jay, we really appreciate your assistance, and I
19 know the members of the media do.

20 And again, thank you so much for your cooperation with
21 this request.

22 Now, I have had many communications with both the
23 State and the defense about how to conduct this
24 examination. I have given the State and the defense the
25 questions which I intend to propound to the juror. And as

1 I have explained in my communications, they are loosely
2 based on the examination conducted in *State v. Green*, which
3 is the last major pronouncement by the South Carolina
4 Supreme Court in 2021 about how issues regarding the
5 possible taint of the juror, jury by some communication
6 from someone not a juror is to be handled. And I have
7 tried to model this procedure on that, although it's very
8 difficult and very difficult for both parties in this case
9 because of the length of time that has taken place since
10 the verdict was rendered.

11 I have received objections to the questions that I am
12 going to propound by both the State and by the defense.

13 And, Mr. Harpootlian, I particularly appreciate your
14 quick response yesterday to the inquiry I made about these
15 questions.

16 And I have taken the comments of Mr. Waters and Mr.
17 Harpootlian into account, and I have slightly revised my
18 questions.

19 And I would like, Ms. Diaz, for you at this time to go
20 to both sides and pass out the copies of the questions as I
21 propose to propound them.

22 (A PAUSE.)

23 THE COURT: Counsel, if you will take a moment, we
24 will just be at ease. If you can take a moment to examine
25 these questions.

1 (A PAUSE.)

2 MR. HARPOOTLIAN: Your Honor, I hate to ask this, but
3 may we have a five-minute recess so we can huddle and talk
4 about this?

5 THE COURT: Yes. I think that's appropriate. It's
6 now about a quarter of. Why don't we reconvene at 5 of?

7 MR. HARPOOTLIAN: Thank you, Your Honor.

8 THE COURT: Court will be in recess.

9 (OFF THE RECORD.)

10 THE COURT: Please be seated.

11 All right, I turn first to the State. Any comments,
12 Mr. Waters? I don't -- let me just say to begin with. You
13 all are free to file if you care to -- I know Mr.
14 Harpootlian has filed his letter to me yesterday, and that
15 explicates with cases and other more detailed arguments his
16 position about these questions. So, that's on the record.

17 Mr. Waters, if you care to file anything along those
18 lines, either the emails that were exchanged with all the
19 parties and myself about this issue or whatever you choose
20 to file, that's fine with me. I don't propose at this time
21 to have any detailed argument about this matter, but I'll
22 receive comments from each side before we begin, Mr.
23 Waters.

24 MR. WATERS: Thank you, Your Honor, and again as Your
25 Honor knows when we did that supplemental briefing, you

1 gave us the option, of course, and, and the State elected,
2 given the option that Your Honor gave so that we can
3 preserve, you know, the inquiry to, to send the brief to
4 Your Honor, as well as those emails addressing the
5 questions. And we will file those, but we wanted to wait
6 until the hearing started to file those for obvious
7 reasons.

8 I guess as it goes to the questions that Your Honor
9 has, has put in there, obviously we had comment on that
10 yesterday, and again we briefed the issue, but in looking
11 at these questions and having raised the issues that we do,
12 we don't have any further issue, and these questions are,
13 are, are otherwise acceptable to the State.

14 THE COURT: Very well. You waive nothing by the
15 comments you have made, and all objections are preserved.

16 MR. WATERS: Thank you, Your Honor.

17 THE COURT: Mr. Harpootlian.

18 MR. HARPOOTLIAN: Please the Court, Your Honor? These
19 are slightly different than what you had previously shown
20 us.

21 THE COURT: Yes. I tried to take into account,
22 frankly, the commentary you made in your letter yesterday.

23 MR. HARPOOTLIAN: So, I might elaborate on a couple of
24 minor points.

25 THE COURT: Yes, sir.

1 MR. HARPOOTLIAN: Hoping to convince you ---

2 THE COURT: I understand.

3 MR. HARPOOTLIAN: --- to, to perhaps change your
4 position.

5 THE COURT: I understand.

6 MR. HARPOOTLIAN: As to question 1.b, you, you go
7 through the facts that they were polled: Is that still your
8 verdict? Each juror answered yes. We would object to that
9 because it emphasizes to the juror that, oh, you've already
10 said that was your verdict, and so you probably should not
11 change that position.

12 As to 2: Was your verdict based entirely on testimony,
13 evidence, and law presented in the case? Again, that's
14 what they were told by the judge and to admit otherwise
15 would indicate they didn't follow their oath rather than
16 just asking who, if someone says something, who was it and
17 did it in any way affect your verdict, and that's what we
18 suggest, and did you hear Becky Hill make any comments
19 about the merits of this case. She doesn't know what the
20 merits are. Did she, as we suggest in our questions, you
21 know, did she say anything that in any way was about the
22 case, the defense or the prosecution? So, we'd ask you to
23 not use the word merits.

24 And, and we say did Ms. Hill -- what comments did you
25 hear Ms. Hill make? Who else was present when Ms. Hill

1 made those comments? Did Ms. Hill's comments influence you
2 in any way and if so, how? Did Ms. Hill's comments
3 prejudice you against the defendant in any way, however
4 slight?

5 It just seems to us that gets to the who, what, where
6 of, of what happened as supposed to, you know, the sort of
7 you said it was your verdict. Now why have you changed
8 your mind today or have you changed your mind today? We
9 just think it puts the onus on the juror to make a
10 statement that would be inconsistent with what they said to
11 the judge last March.

12 THE COURT: Very good. Thank you very much for those
13 remarks. I will ask the questions as I have handed them
14 out to you. I think they are within the parameters set by
15 *State v. Green*, modified because of the unusual
16 circumstances here. I think asking questions of whether
17 there was any prejudice also makes some assumptions about
18 that issue. That's a loaded word.

19 I've chosen, I think, to ask in a neutral way, but the
20 word merits was used by both sides at some points in your
21 trying to suggest how I ask these questions, but I've done
22 the best I can. Your failure to make any further comments
23 is not a problem. All rights are preserved. All positions
24 are preserved, and we will now move forward to examination
25 of the juror.

1 Let me explain how ---

2 Yes, sir.

3 MR. HARPOOTLIAN: Your Honor, I have one other thing
4 I'd like to put on the record.

5 THE COURT: Yes, sir.

6 MR. HARPOOTLIAN: Your Honor, I'd move for a
7 continuance. Might I state, state the grounds?

8 THE COURT: Yes. Of course.

9 MR. HARPOOTLIAN: Your Honor, what we're determining
10 is this. These jurors over the next -- today and on Monday
11 will be asked did Ms. Hill say anything. I mean, the way
12 you're going to ask it -- if so, what did she say -- and
13 it's unclear as to whether or not you are going to allow us
14 -- well, A, that she's going to be required to testify.
15 And B, if so, will you examine her? Will we examine her?

16 THE COURT: You talking about the clerk of court?

17 MR. HARPOOTLIAN: Ms. Hill, yes, ma'am.

18 THE COURT: Thank you for asking that question. I had
19 intended to go over how we're going to operate on Monday
20 after this examination was complete, and we'll do that.
21 But let me just tell you I certainly anticipate that the
22 State will put this witness up, and you will cross-examine
23 this witness. Because there is still some uncertainty
24 about what the testimony will be, I will be flexible with
25 the State about how they examine this witness, and I will

1 be flexible with you about how you examine this witness. I
2 reserve the option of asking questions myself at the end if
3 there are things I think have not been covered that need to
4 be covered. But each side will be able to examine the
5 clerk of court.

6 MR. HARPOOTLIAN: Your Honor, to that end, and that's
7 one of the reasons ---

8 THE COURT: Now, I've said certain things before about
9 the parameters of what I think needs to be considered in
10 this matter. And I'm not going to go back over all that at
11 the moment, but there may be some limitations on what can
12 be asked Ms. Hill because I don't think -- these questions
13 are aimed at two things. Showing -- well, the questions
14 are aimed at showing what, if anything, the clerk of court
15 said to these jurors that might bear on the merits of the
16 matter before they rendered their verdict.

17 But in addition to that, there are certain questions
18 that are going to be asked that you say goes to the
19 credibility of the witness. I think I am able to fully
20 examine the credibility of the witness without going
21 through everything that has entangled her since the close
22 of this case, and we've already talked about all that.

23 Just let me finish ---

24 MR. HARPOOTLIAN: I'm sorry.

25 THE COURT: --- Mr. Harpootlian, and we can talk some

1 more about that, but I'm not going to delay this
2 examination to get into the details of the Hill
3 examination.

4 I have said that only the jurors who sat on this case
5 and rendered the verdict are going to be examined, and I
6 know there's some controversy about that how deeply you
7 want to get into questions that you think arise from
8 interactions with the alternate who was dismissed. I take
9 the position that she was dismissed for things that had
10 nothing to do with this Facebook debacle that took place,
11 and Judge Newman made that ruling, and I am following
12 absolutely exactly what the trial judge ruled. We can talk
13 about that some more later, but I don't intend to right now
14 get into the details. So you will know, yes, you will be
15 able to examine the clerk of court.

16 MR. HARPOOTLIAN: Your Honor, just two, two minor
17 matters. We would not call any juror about why they were
18 dismissed. That's not what the purpose would be.

19 THE COURT: I understand the purpose, and you were
20 very eloquent about that both in your written
21 communications and in what you've argued when we were
22 together last. I understand what your position is about
23 that, and I think you understand mine. We can talk about
24 that further later.

25 MR. HARPOOTLIAN: Okay, just one other matter, and

1 that is we've recently been furnished by the State -- first
2 of all, we understand the State spent six hours with Ms.
3 Hill preparing ---

4 THE COURT: I understand. That would be normal, in my
5 view, to spend time with someone you intended to offer as a
6 witness. I see no ---

7 MR. HARPOOTLIAN: And they've also furnished ---

8 THE COURT: --- no problem with that.

9 MR. HARPOOTLIAN: --- to us the affidavit for search
10 warrant which would indicate that Ms. Hill was somehow
11 involved in the wiretapping by her son. We ---

12 THE COURT: I am not going to get into that. That is
13 a matter under investigation by the authorities; that is
14 not something I'm going to get into. It's the very kind of
15 thing we've already talked about at some length. I am
16 trying to be very cautious, not out of any protection of
17 the clerk of court, but I believe I can make the decisions
18 that need to be made in this case without touching on
19 matters that are the subject of some sort of other official
20 investigation, and I'm trying to stay away from that.

21 MR. HARPOOTLIAN: Well, Your Honor, under Rule 614(b),
22 we believe we should be able to have full and thorough
23 cross-examination of this witness.

24 THE COURT: I know. Mr. Harpootlian, two things.
25 You're talking about a motion to continue right now.

1 MR. HARPOOTLIAN: Yes, ma'am.

2 THE COURT: I don't need to get into a full
3 examination of all your arguments about the juror -- I
4 mean, about Clerk of Court Hill right now. I'm not going
5 to do that.

6 MR. HARPOOTLIAN: Well, we can't be permitted to
7 cross-examine her without additional time. We're just
8 getting information from the State this week.

9 THE COURT: Well, I deny the motion to continue,
10 respectfully.

11 MR. HARPOOTLIAN: Yes, Your Honor. Thank you.

12 THE COURT: All right. Now, what will now happen is
13 that the juror will be brought forward. Her attorney is in
14 the witness -- -- is in the jury box on the back row. He
15 will not be permitted to interrupt the proceedings or
16 interject any kind objection, anything of that kind. He
17 escorted her here and for her comfort, I have allowed him
18 to be here. I can assure you the bailiff has been with her
19 at all times. Mr. Bland has very much honored my request
20 that no conversation be had amongst them about her
21 testimony in this case at this time.

22 So, Officer Door, would you bring the jury forward?
23 Thank you.

24 Be at ease.

25 (A PAUSE.)

1 (JUROR X ENTERS THE COURTROOM.)

2 THE COURT: Good morning.

3 I will be referring to this juror as Juror X.

4 Juror X, let me give some preliminary remarks about
5 this matter to you. You have been subpoenaed to come
6 forward with testimony in connection with a motion by the
7 defendant for a new trial. Normally these kinds of
8 hearings like the one I'm conducting today would be done
9 right after the verdict is rendered because that's
10 generally when issues like this come up. This is almost a
11 year after your verdict, and I'm very sensitive to how
12 difficult that must be for any of the jurors in this case,
13 including yourself.

14 Please understand to begin with you have done
15 absolutely nothing wrong. You discharged your duties as
16 you were asked to, and I respect that, but I must conduct a
17 hearing to explore the issues that have been raised, and I
18 intend to do that.

19 You will be sworn, and then you will take the witness
20 box, and I will ask you some questions. I am the only one
21 who will ask you some questions. When those questions are
22 complete, I will ask you to take your seat in the jury box.
23 After everything is completely closed about your testimony,
24 then you may leave or stay as you wish, but your attorney
25 is with you, and your attorney will escort you to the

1 secure arrangements that have been made, and I hope you
2 have a very good time with your Bible study class and the
3 engagement you have for next week.

4 So, swear the witness.

5 JUROR X, BEING DULY SWORN,

6 TESTIFIES AS FOLLOWS:

7 CLERK: Thank you. Have a seat right there.

8 EXAMINATION BY THE COURT:

9 Q. Juror X, you rendered a verdict on March 2, 2023, in
10 the matter of the State of South Carolina against Richard
11 Alexander Murdaugh. The verdict was read in open court,
12 signed by the foreperson of the jury. The court then said:

13 Madame Forelady and members of the jury, if this
14 is your verdict, if this is your verdict of each
15 and every juror, please let it be known by
16 raising your right hand.

17 The transcript then indicates the jurors complied.
18 The jury was then individually polled and each was asked:
19 Was this your verdict? Each juror answered yes. Each
20 juror was then asked: Is that still your verdict? And each
21 juror answered yes.

22 Was that an accurate answer about your verdict at that
23 time?

24 A. Yes, sir, Your Honor.

25 Q. Speak up so that the ---

1 A. Yes, Your Honor.

2 Q. Was your verdict based entirely on the testimony,
3 evidence, and law presented to you in this case?

4 A. Yes.

5 Q. Did you hear Ms. Becky Hill, the clerk of court for
6 Colleton County, make any comment about the merits of this
7 case before your verdict?

8 A. No, ma'am.

9 Q. Was your verdict on March 2, 2023, influenced in any
10 way by any communications by the clerk of court, Becky
11 Hill, in this case?

12 A. No, Your Honor.

13 Q. And a final question I have for you. There was some
14 issue raised at one point about your private meetings with
15 the clerk of court. Did those -- and it doesn't sound like
16 they were of long duration -- but private meetings with the
17 clerk of court, were those about any issue other than the
18 procedure involved with the case?

19 A. It was about a different matter. It was nothing to do
20 with the case.

21 Q. All right.

22 THE COURT: Thank you, ma'am. You may return to the
23 jury box.

24 (JUROR X EXITS THE STAND.)

25 THE COURT: That concludes the questioning of the

1 Court. Madame Juror, Juror X, I'd like for you now to
2 accompany your lawyer and the bailiff to the jury room.
3 Please go to the jury room for a moment, and then I will
4 indicate that you can come back and watch the rest of these
5 proceedings or be dismissed at your preference. You may
6 retire from the jury box.

7 (JUROR X EXITS THE COURTROOM.)

8 THE COURT: All right, anything further from the
9 State?

10 MR. WATERS: Nothing from the State, Your Honor.

11 THE COURT: From the defendant?

12 MR. HARPOOTLIAN: Your Honor, we were furnished a
13 momentum from Mr. Waters this morning I'd like to publish
14 to you.

15 THE COURT: Certainly.

16 MR. HARPOOTLIAN: It says:

17 Per Chief Attorney -- Chief Attorney Waters,
18 please be advised that attorney for Juror 826 has
19 told us that his client says that prior to the
20 defendant's testimony, his client did hear clerk
21 say words to the effect of, quote, looks like the
22 defendant is going to testify. This is an
23 important day or this is an epic day. It was
24 some statement that it was rare for a defendant
25 to testify.

1 THE COURT: All right, sir.

2 MR. HARPOOTLIAN: So, again we go back to the -- I
3 think that the jurors have difficulty understanding what
4 the words merits means. I ask you to ask her about this.
5 This is from her lawyer; this is not something we got.

6 And secondly, when she said it had nothing -- when
7 they had a discussion private, it was not about the case,
8 maybe she doesn't understand what merits is. We'd ask you
9 to inquire what those discussions were about. And I don't
10 -- let me hand this up to the court to -- so you have
11 exactly what we were told by Mr. Waters that her lawyer
12 said.

13 THE COURT: Mr. Waters.

14 MR. WATERS: Your Honor, again, yes, that was relayed
15 to me by her lawyer. So, of course in keeping with our
16 obligations, we provided that to the defense.

17 As to Mr. Harpootlian's specific points, again we
18 think the inquiry is self-evident and the questions are
19 adequate, and I think merits is a self-explanatory word.
20 And so we believe the inquiry the Court has conducted is
21 sufficient and for this particular juror is, is enough to
22 get to the heart of the issue that needs to be addressed
23 before the Court.

24 THE COURT: Very well. You may be seated.

25 Mr. Bland, please notify the bailiff that I would like

1 to have the juror come forward again.

2 MR. BLAND: Yes, ma'am.

3 THE COURT: Thank you.

4 (A PAUSE.)

5 (JUROR X REENTERS THE COURTROOM.)

6 THE COURT: Juror X, will you take the witness stand
7 again, and remember that you're still under oath.

8 EXAMINATION BY THE COURT:

9 Q. I have asked the attorneys for any further commentary
10 about the questions I asked, and I have been asked to ask
11 one more question, and I'm going to do that.

12 I'm going to read you a memorandum sent by the State
13 to counsel for the defense and then ask you about it, all
14 right?

15 Per Chief Attorney Waters, please be advised that
16 the attorney for Juror X has told us that his
17 client says that prior to the defendant's
18 testimony, his client did hear Clerk Hill say
19 words to the effect of, quote, looks like the
20 defendant is going to testify. This is an
21 important day, close quote, or, quote, this is an
22 epic day, close quote, and that there was some
23 statement that it was rare for a defendant to
24 testify.

25 Juror X, can you verify that what I have read is

1 something that you heard and told your -- told your
2 attorney?

3 A. Yes, ma'am.

4 Q. Very good. Did these statements have any impact on
5 your verdict?

6 A. No, ma'am.

7 Q. Very good.

8 THE COURT: You are dismissed.

9 (JUROR X EXITS THE STAND AND EXITS THE COURTROOM.)

10 THE COURT: All right, Mr. Waters.

11 MR. WATERS: Nothing from the State, Your Honor.

12 THE COURT: Subject to all previous objections already
13 lodged, Mr. Harpootlian?

14 MR. HARPOOTLIAN: No, Your Honor, not as to this
15 juror. I would like to discuss with the court some
16 logistics for next week.

17 THE COURT: Sure. We'll have a full discussion of the
18 logistics for Monday as soon as we dismiss the juror.

19 MR. HARPOOTLIAN: We're done with the juror.

20 THE COURT: Thank you, sir.

21 MR. HARPOOTLIAN: Subject to our previous --
22 previously made objections.

23 THE COURT: Very good.

24 Mr. Bland, you may go to your client now and notify
25 her, number one, she's free to leave. Number two, please

1 honor the instructions that I've given with respect to
2 discussing this matter with other jurors. Thank you so
3 much.

4 All right, let's talk about what happens on Monday.
5 My scenario about this is that of course the jurors will
6 all be escorted securely to the jury room. I do not
7 propose to have their lawyers with them in the jury room.
8 I do propose to have a bailiff in there. I think there's
9 kind of comfort in numbers, so I don't think they need an
10 individual escort into the jury room, but a bailiff will be
11 with them.

12 I would call them one by one. I will try to come up
13 with some Xs, Ys, and Zs to enumerate, and I ask that when
14 we deal with questions for them that whatever the key is I
15 develop will be one you use for these jurors, and I will
16 get that to you sometime today, I hope.

17 I would bring the jurors to the jury box and give them
18 instructions as I gave and remarks as I gave to this juror
19 today. I will then send them to the jury room, and one by
20 one I will call them to be examined. When a juror is
21 examined, the juror will then be seated in the jury box,
22 and I will go through the numbers until we examine all the
23 jurors. Then I will receive, of course, any further
24 information that is needed from y'all, and then the jurors
25 will be dismissed or allowed to remain in the jury box for

1 the testimony of the clerk of court at their desire.

2 Then the clerk of court would be offered. I would
3 propose that she be directly examined by the State, but I
4 again say to the State I will be very flexible about how
5 that examination is done because of the circumstances in
6 which we find ourselves. And I will do the same for the
7 defense and allow brief cross-examination.

8 But I will be very sensitive about not straying into
9 areas that simply are further indication of what defense
10 contends is her lack of credibility and her motive for
11 doing whatever it is they say she did. I think I am able
12 to evaluate both of those things and make a determination
13 from that. That is, motive testimony and testimony as to
14 what exactly was said and done without exploring the full
15 breadth of matters that may be under examination by other
16 authorities. I don't want get into that and inadvertently
17 start a proceeding here that would interfere with any other
18 investigation that is being made in connection with this
19 matter. So, I'm sensitive about that, and I'll try to do
20 the very best I can. That's all I can do.

21 And you, of course, will be free to lodge whatever
22 disagreement with the way I proceed you care to and have it
23 fully preserved on the record. I have the great comfort of
24 knowing that I am simply the trial judge in this matter,
25 and others who will evaluate these matters on appeal, as it

1 should be.

2 I have not found another case in South Carolina's
3 jurisprudence that is exactly like this. So, there's
4 plenty of room for guidance from the Court of Appeals and
5 Supreme Court if they choose to do that. And I am very
6 comfortable with that and anything you wish to put in the
7 record that would aid in your position about these matters.

8 All right, that said, what things am I not covering,
9 Mr. Waters, that you would want covered about the procedure
10 from the State's point of view?

11 MR. WATERS: I believe we understand Your Honor, and
12 everything that you've indicated is acceptable to us.
13 Obviously, we've made arrangements to get the jurors here
14 and brought in in a secure fashion, and obviously we're
15 certainly comfortable with them being in a room together if
16 there's a bailiff there instructing them, of course, not to
17 talk about the merits of anything for this proceeding.

18 And we certainly understand your Court's ruling as to
19 the examination of the clerk. We're prepared to proceed
20 and obviously as we develop, make whatever objections we
21 think are appropriate, but we're comfortable with the
22 Court's procedure.

23 THE COURT: Thank you, sir.

24 Mr. Harpootlian.

25 MR. HARPOOTLIAN: Your Honor, who is transporting the

1 jurors here?

2 THE COURT: Sir?

3 MR. HARPOOTLIAN: Who's transporting the jurors here?

4 THE COURT: SLED, I think, or ---

5 MR. WATERS: Your Honor, we obviously gave the jurors
6 that option. I believe that there may be one that is --
7 that is getting a ride, but other than that, the other
8 jurors are transporting themselves. However, just like we
9 did at trial, they will meet at an undisclosed location off
10 site, and then the -- SLED will escort them in through a
11 security entrance so that they ---

12 THE COURT: Yes, that is what I had understood, Mr.
13 Harpootlian, is the State has provided a gathering point
14 for them that is at a distance from having to put up with
15 the traffic and the confusion of the courthouse, and they
16 will then be brought to the courthouse and placed in -- and
17 come through the secure entrance and be placed in the jury
18 assembly room. That's how it will be handled.

19 MR. HARPOOTLIAN: Your Honor, I just state this for
20 the record, and it's going to be an objection I'm going to
21 have to make over and over again. SLED was the original
22 investigating agency. They were the prosecutors, and they
23 continue to interview jurors. Same agency. There's no
24 Chinese wall provision as we would do in private practice
25 via Chinese wall. There's no Chinese wall.

1 I don't -- I'm not sure you can even use that term
2 anymore. I think they call it ethical barrier. Took a
3 deposition in San Francisco not long ago and used that term
4 and got my hat handed to me, if you will.

5 So -- but there's no such provision in, in --
6 apparently at SLED. So, it's -- it, it raises questions
7 about the integrity, not of the State but of the process,
8 which should be avoided. That's number one.

9 Number two, when we examine Ms. Hill, we understand --
10 we have a rendition of a statement that was taken, a sworn
11 statement, and then notes from a subsequent ---

12 Are there notes from the interview this week?

13 MR. WATERS: There was a, a prep meeting, but even
14 though that was a prep meeting with the attorneys, I, as I
15 always have, will provide the defense with anything I that
16 believe is in addition to that which has already been
17 provided. And so we, as we always do, will do that.

18 MR. HARPOOTLIAN: And I don't want to ---

19 MR. WATERS: We conducted this investigation with
20 independence and integrity, and all the SLED agents have
21 been instructed, Your Honor, that they are in no way to do
22 anything but gather the facts, good, bad, or ugly. The
23 SLED agents that will be transporting the jurors are
24 instructed -- strict instructions not at all to discuss the
25 matter of the case. We've been very mindful and careful to

1 ensure that there is no thumb on the scale in this inquiry,
2 and we will continue to do that.

3 MR. HARPOOTLIAN: And let me state for the record I
4 have no question about Mr. Waters's integrity, his
5 intentions. Not so much with the police officers. That's,
6 that's my experience, having stood in this courtroom many
7 years as a prosecutor. Sometimes law enforcement officers
8 become overzealous to protect the arrest they made, whether
9 it be in a motion to suppress or otherwise. I'm not saying
10 the attorneys in this case in any way have put their thumb
11 on the scales. I just to the extent that you -- Chinese
12 wall to the extent that you keep folks insulated I think is
13 a good thing.

14 The second thing is this. You know, it took about
15 fifteen minutes to do this juror. So, we do eleven more
16 jurors, it's going to take two and a half to three hours
17 with, with breaks, I would think, which means we start at
18 9:30, we probably break for lunch, and then come back and
19 do Ms. Hill. It would be -- does that sound reasonable?

20 THE COURT: Yes.

21 MR. HARPOOTLIAN: Okay, and we may attempt to call
22 witnesses after Ms. Hill. Obviously, Your Honor will have
23 to decide at that juncture whether they are appropriate or
24 not, but we may want to make a brief proffer on the record
25 of what they would say. I think we only have one.

1 THE COURT: Okay. I'm going to give you some
2 flexibility about that, Mr. Harpootlian. I ruled out
3 having testimonial proffer in this case and told you I
4 wanted it submitted in written form or otherwise. If you
5 choose to put it on the record in verbal form, I won't
6 prevent that, but I'm not going to take -- I'm not going to
7 take up a big block of time taking ---

8 MR. HARPOOTLIAN: Should, should ---

9 THE COURT: --- all kind of other testimony.

10 MR. HARPOOTLIAN: Should not. The problem is the
11 written -- when we submitted written affidavits won't
12 accommodate like the thing we heard this morning. I mean,
13 things come up in Ms. Hill's testimony or other jurors'
14 testimony that may be relevant. I mean, the person we have
15 who has given an affidavit is not the so-called egg lady,
16 okay.

17 THE COURT: Well, I understand that, and I'm not going
18 to make you recite what you plan until the opportunity
19 presents itself after the testimony of Hill is taken. So,
20 know that I would permit some kind of on-the-record
21 proffer. I just don't want to go through a whole bunch of
22 actual testimony in connection. Don't think that's
23 necessary.

24 MR. HARPOOTLIAN: Your Honor, I will keep it -- I am
25 known for my brevity.

1 THE COURT: Well, that will be fine.

2 MR. HARPOOTLIAN: Thank you.

3 THE COURT: You don't need to make a comment about
4 that, Mr. Waters.

5 MR. WATERS: I will not make a comment about that, but
6 nothing further from the State, Your Honor. Obviously,
7 there will be bridges that we have to cross when we get to
8 them, and the State will be prepared for that.

9 THE COURT: Sure. Sure. I understand. I understand
10 that.

11 MR. WATERS: Thank you, Your Honor.

12 THE COURT: Any other issues? I am thinking we can
13 conclude this thing Monday, which would be preferable, of
14 course, but I have, as you know, set aside more days if
15 that were at all necessary. But I am very hopeful for
16 everybody's schedule, including yours, Mr. Harpootlian,
17 that we can conclude the matter on Monday.

18 MR. HARPOOTLIAN: Your Honor, I'm in a hurry to get
19 back to the senate to debate open-carry guns. I am with
20 bated breath awaiting getting out of here and going to do
21 that very important work.

22 THE COURT: I understand. I may be saving you from
23 some things, but in any event, we'll certainly try to
24 accommodate the other obligations that each of you has.

25 MR. HARPOOTLIAN: Thank you, Your Honor.

1 MR. WATERS: Thank you, Your Honor.

2 THE COURT: All right, anything further?

3 MR. WATERS: Nothing from the State, Your Honor.

4 THE COURT: All right, sir. Court will be in recess.

5 (EMAIL MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER
6 1.)

7 (WHEREUPON, THE CASE IS AT EASE.)

8 *MONDAY, JANUARY 29, 2024*

9 (COURT RESUMES AT 9:50 AM.)

10 (WITNESS LIST MARKED INTO EVIDENCE AS COURT'S EXHIBIT
11 NUMBER 2. SEALED BY ORDER OF THE COURT.)

12 THE COURT: Good morning. Please be seated.

13 Ladies and gentlemen, and I now address these remarks
14 to the members of the press. You have not been completely
15 in accord with what I asked you to do last Friday, but you
16 have all done me the great favor of obeying what I asked
17 you to do with respect to the identity of the jurors, and I
18 thank you very much for that.

19 We will -- the first order of business after I give
20 some preliminary remarks will be the examination one by one
21 of the jurors, and what will happen is I will bring all of
22 the jurors in to begin with, and they will be seated. I
23 will make remarks to the entire panel. I will then ask
24 that the jury be taken to their jury room, and I will one
25 by one call the jurors and address them, and I will address

1 them by a letter that I have developed rather than their
2 number.

3 Now, I realize full well that many of you who attended
4 this trial for many, many weeks probably know these jurors,
5 and I'm not making any further statement about what you do
6 or don't do in terms of identifying the jurors, but I don't
7 want any photographs. I don't want any photographs taken
8 of the jurors by the media.

9 With respect to the rest of the audience, if you have
10 devices -- cell phones, iPads, or anything of that nature -
11 - please silence them. Please do not use them. The press
12 is allowed to use their devices in order to make notes, but
13 the press is not making any photographs either. I have a
14 pool photographer as well as a pool Court TV arrangement,
15 and that's what will be used to photograph, and those
16 materials will, of course, be fed and available to the
17 press.

18 All right, the jurors are in place in the jury room,
19 Mr. Bailiff?

20 BAILIFF: Yes, Your Honor.

21 THE COURT: Very good. Bring me the jurors.

22 MR. HARPOOTLIAN: If it please the Court, Your Honor?
23 Prior to bringing that jury in, may I put something on the
24 record?

25 THE COURT: Sure.

1 Hold for a minute.

2 Yes, sir.

3 MR. HARPOOTLIAN: Your Honor, you have a list of
4 questions you distributed to us.

5 THE COURT: Yes, sir.

6 MR. HARPOOTLIAN: Of course you went through those
7 with Juror...

8 THE COURT: Z -- or X, X.

9 MR. HARPOOTLIAN: X. I know it was one of those last
10 letters.

11 THE COURT: Yes.

12 MR. HARPOOTLIAN: Juror X, number -- the third
13 question you say: Did you hear Ms. Becky Hill make any
14 comments about the merits of this case before your verdict?

15 THE COURT: Yes, sir.

16 MR. HARPOOTLIAN: And clearly the juror didn't
17 understand what the word merits meant.

18 THE COURT: I disagree with that, but you may make
19 your record about that. I think the juror understood what
20 was being asked. And, frankly, in some of the materials
21 that we've exchanged back and forth about questions, you
22 yourself have used the word merits. So, I don't think she
23 was confused.

24 MR. HARPOOTLIAN: Well, Your Honor, occasionally I
25 make a mistake, and if you would just, respectfully ---

1 THE COURT: I understand.

2 MR. HARPOOTLIAN: --- use the words did make any
3 comment about the case before your verdict. Just leave out
4 their judgment about the merits because they don't know --
5 merits is a legal word.

6 THE COURT: I will take what you say into account, but
7 I have already examined one juror using that term, and you
8 now say that that terms confused the juror. You have that
9 on the record and certainly would be able to argue that to
10 any of the appellate courts that review what I do here.
11 But my intention is to use the language that I used with
12 the juror I've already interviewed.

13 MR. HARPOOTLIAN: But, Your Honor, you went and did a
14 follow-up question at our request which elaborated on what
15 that meant, and, and certainly after you asked that
16 question, we think that clarified it. And you could use
17 merits or anything else about the case and deal with both
18 issues. I just think it's going to require us, based on
19 statements that these jurors have given to SLED, to ask
20 very specific questions.

21 THE COURT: I understand what you're asking. Let me
22 ask you this, Mr. Harpootlian. Do you happen to have the
23 transcript of Friday's proceedings?

24 MR. HARPOOTLIAN: I don't think so.

25 THE COURT: State, do you all happen to have a

1 transcript of Friday's proceedings?

2 MR. WATERS: Your Honor, we're looking right now.

3 THE COURT: Belay that. I've got a copy. Let me look
4 at it for a minute to see what I did in clarification, and
5 so just pause for a moment and let me look at that.

6 MR. HARPOOTLIAN: Thank you, Your Honor.

7 (A PAUSE.)

8 THE COURT: Mr. Harpootlian.

9 MR. HARPOOTLIAN: Yes, Your Honor.

10 THE COURT: I look at this transcript, and the only
11 thing I note...

12 (A PAUSE.)

13 THE COURT: I said this:

14 I asked the attorneys for any further commentary
15 about the questions I asked, and I have been
16 asked to ask one more question, and I'm going to
17 do that. I'm going to read you a memorandum by
18 the State to counsel for the defense and then ask
19 you about it. All right.

20 And then here's what I read:

21 Per Chief Attorney Waters, please be advised that
22 the attorney for Juror X has told us that his
23 client says that prior to the defendant's
24 testimony, his client did hear Clerk Hill say
25 words to the effect of, quote, looks like the

1 defendant is going to testify. This is an
2 important day, close quote, or, quote, this is an
3 epic day, close quote, and that some statement --
4 there was some statement that it was rare for a
5 defendant testify.

6 And then I said: Juror X, can you verify that what I
7 have read is something you heard and told your attorney?

8 And she said: Yes, ma'am.

9 Very good. Did these statements have any impact on
10 your verdict?

11 No, ma'am.

12 Very good.

13 I will, I will ask that question. I didn't change the
14 -- well, I've read you what I asked. I will be glad to do
15 that again.

16 MR. HARPOOTLIAN: Your Honor, different jurors say
17 different things based on the memorandums we've received.

18 THE COURT: I won't say you told your attorney or
19 anything like that, but I will ask about that statement
20 having been made.

21 MR. HARPOOTLIAN: Your Honor, just for the record, we
22 believe the term merits is a term of art, just as if you
23 ask them was there probable cause. Again, it -- or
24 anything else. We're not asking you to open Pandora's box.

25 THE COURT: I hear what you say, and I will take it

1 into account.

2 MR. HARPOOTLIAN: Okay. Thank you, Your Honor.

3 THE COURT: Mr. Waters, anything on your behalf?

4 MR. WATERS: I do not have anything further, Your
5 Honor. We believe the term is self-explanatory.

6 THE COURT: Thank you, sir.

7 All right, just so you know, Mr. Harpootlian, I'll
8 have to go to my screen to do this other, but I will -- the
9 third question will read: Did you hear Ms. Becky Hill make
10 any comment about this case before the verdict?

11 MR. HARPOOTLIAN: Yes, Your Honor.

12 THE COURT: Okay. That's what I'll ask. All right.

13 All right, Mr. Bailiff, bring me the jury.

14 (A PAUSE.)

15 BAILIFF: Your Honor, may I approach?

16 THE COURT: Yes.

17 (THE JURORS ENTER THE COURTROOM.)

18 BAILIFF: Jury is seated, Your Honor.

19 THE COURT: Thank you very much.

20 Good morning, ladies and gentlemen of the *State v.*

21 *Murdaugh* jury. I wanted to make a few opening remarks to
22 you before I questioned each of you about the matter.

23 You have done absolutely nothing wrong, none of you,
24 not any of you. You didn't ask to serve, but you served
25 and did your duty. This was an unusually difficult trial

1 because of its length. Six weeks is almost unheard of in
2 South Carolina as the length of a case. It was difficult
3 because of the intense publicity and public interest in the
4 case. It was difficult because of the complexity of
5 testimony and exhibits in the case, and you acquitted
6 yourself honorably. So, this question today is not about
7 anything you did wrong. Please be assured of that. I
8 respect you and I respect your service.

9 Today I'm going to ask you to do something that is
10 difficult. This case is unique. Most of the time if
11 there's some issue about improper conduct or contact with a
12 juror, it comes up immediately. The judge puts questions
13 to the juror and perhaps to the person who may have made an
14 improper comment, and then you go on to verdict, or
15 sometimes very shortly after the verdict is rendered, and
16 again the judge questions the affected jurors in the
17 supposed interference and makes a ruling right then and
18 there on either a new trial or a mistrial.

19 Now here we are almost a year after your beginning of
20 service on this case, and that makes it mighty difficult
21 for you to do something I'm going to ask you to do, and
22 it's this. Today I ask you to focus your attention.

23 (AUDIO PROBLEMS INTERRUPT BRIEFLY.)

24 THE COURT: What is that? Mr. Bailiff, what is that
25 noise?

1 BAILIFF: Not sure.

2 THE COURT: Is that the sound system?

3 MR. WATERS: I believe is the court's sound system.

4 THE COURT: This is the funkiest sound system in the
5 world, so we just have to keep up with it. I have had
6 trouble in every case I've ever tried with the sound
7 system. So, jurors, if something happens and the sound
8 system goes haywire, we'll stop for a minute until it
9 stops.

10 Now as I was saying, I want you to focus your
11 attention as you answer the questions I'm going to ask you
12 on your six weeks of experience as a juror in this case and
13 on the point in the trial where the judge charged you and
14 on your verdict as you rendered it on March the 2, 2023.
15 That's what I want the focus to be.

16 Again, I know I'm asking a lot to have you cast
17 yourself back into that time, but that's what I'm -- the
18 questions I'm asking are about that time and not about this
19 time. There has been so much drama about this matter since
20 the verdict was rendered, and my heart goes out to
21 everyone, the lawyers and you who are in this trial. That,
22 I can't help, but I've been asked by the Supreme Court to
23 take a look at this issue. The appeal is on pause until I
24 do, and I've got to do my duty as I see it, and you do
25 yours as I know you see it.

1 So, I thank you very much in advance for, again, a
2 terrible inconvenience of calling you all back together
3 now, but it's very essential to completing the record about
4 this case and placing it before the appellate authorities
5 as it needs to be. So, in advance I thank you.

6 What I'm going to do now is dismiss you to the jury
7 room, and one by one I will call you and I will refer to
8 you by a letter that I have just assigned you that isn't
9 your jury number and certainly isn't your name. You know,
10 these people in the media saw y'all all through the trial.
11 They probably know who you are, but I'm trying to do my
12 duty as I see it when I make your appearance here anonymous
13 to the record, and only the court reporter will have a
14 sealed document by me indicating what the key means in
15 terms of your juror number and your name.

16 So, I'm doing, doing everything I can do about this
17 matter, but it goes without saying that your business is
18 your own business. You don't have to interview with a
19 soul, not lawyers, not media, not anyone after this matter.
20 That choice is purely yours, and I will respect that and
21 protect that to the best I can if anything comes up
22 afterwards.

23 All right, you may go to the jury room.

24 (THE JURORS EXIT THE COURTROOM.)

25 THE COURT: All right, Mr. Bailiff, bring me Juror Z.

1 MR. HARPOOTLIAN: Your Honor, could I ask -- one other
2 matter?

3 THE COURT: Yes, sir.

4 MR. HARPOOTLIAN: One of the individuals sitting in
5 the jury box called this -- the next one, the next juror
6 liar publicly. I'd ask that he -- that would be Mr. Bland
7 and his partner, cohort -- not sit behind her or near her
8 while she's testifying.

9 MR. BLAND: I, I object.

10 THE COURT: Well, just ---

11 MR. HARPOOTLIAN: Your Honor.

12 MR. BLAND: Don't ever say ---

13 MR. HARPOOTLIAN: I'd object to ---

14 MR. BLAND: --- that I called anybody a liar.

15 MR. HARPOOTLIAN: --- him speaking.

16 THE COURT: One moment. One moment. We're not going
17 to have a big colloquy about this.

18 You keep your seat for a moment, Mr. Harpootlian.

19 MR. HARPOOTLIAN: Yes, Your Honor.

20 THE COURT: Mr. Bland, you do the same.

21 Mr. Bender, is there a seat over next to you?

22 MR. BENDER: There is.

23 THE COURT: Mr. Bland, will you go over and sit next
24 to Mr. Bender, please? Thank you.

25 MR. HARPOOTLIAN: Thank you, Your Honor.

1 THE COURT: For the record, I have some people in the
2 jury box. Two of them are SLED agents, one of them is the
3 media consultant, and one of them is attorney for several
4 of the jurors, Mr. Bland, and that's being done at my
5 direction.

6 MR. MONGILLO: And, Judge, you also have Scott
7 Mongillo of Bland Richter also in the jury box.

8 THE COURT: Very good. Yes, sir. That's fine.

9 All right, bring me Juror Z.

10 (JUROR Z ENTERS THE COURTROOM.)

11 THE COURT: Juror Z, you may take the witness box
12 after you are sworn. Step over here to the clerk, and she
13 will administer the oath.

14 JUROR Z, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 CLERK: Thank you. Please have a seat on the witness
17 stand.

18 EXAMINATION BY THE COURT:

19 Q. Juror Z, I will ask you some questions, and there are
20 no right or wrong answers. The truth is what I seek, and
21 that is the truth of what you experienced in relation to
22 these questions at the *State v. Murdaugh* trial.

23 You rendered a verdict on March the 2, 2023. That
24 verdict was made in open court by the foreperson of the
25 jury, and then the Court said this:

1 Madame Forelady and members of the jury, if that
2 is your verdict of each and every juror, let it
3 be known by raising your hand.

4 The transcript then indicates that the jurors
5 complied. The jury was individually polled, and each was
6 asked: Was that your verdict? Each juror answered yes.
7 Each juror was then asked: Is that still your verdict? And
8 each juror answered yes.

9 Was that an accurate statement about your verdict at
10 that time?

11 A. Yes, ma'am.

12 Q. All right. Was your verdict based entirely on
13 testimony, evidence, and law presented to you in this case?

14 A. Yes, ma'am.

15 Q. Did you hear Ms. Becky Hill make any comment about
16 this case before your verdict?

17 A. Yes, ma'am.

18 Q. If yes, what did Ms. Hill say?

19 A. To watch his actions.

20 Q. To watch his actions. What else?

21 A. To watch him closely.

22 Q. To watch him closely. Anything else you remember?

23 A. There is, but I can't remember.

24 Q. Okay. That's fine, and was your verdict on March the
25 2, 2023, in any way -- with any -- influenced in any way

1 with any communications by the clerk of court, Becky Hill,
2 in this case? Want me ---

3 A. Yes, ma'am.

4 Q. --- to read it again?

5 A. Yes, please.

6 Q. All right. Was your verdict influenced in any way by
7 the communications of the clerk of court in this case

8 A. Yes, ma'am.

9 Q. And how was it influenced?

10 A. To me, it felt like she made it seem like he was
11 already guilty.

12 Q. All right, and I understand that, that that's the
13 tenor of the remarks she made. Did that affect your
14 finding of guilty in this case?

15 A. Yes, ma'am.

16 Q. All right. Be at ease.

17 THE COURT: Those are my questions as submitted to the
18 juror. Are there any reactions, further questions, and so
19 forth? If there are and you would like to voice them, I
20 can ask the juror to retire to the jury room. Just tell me
21 whether I need to do that.

22 MR. WATERS: Your Honor, Court's indulgence one
23 moment?

24 THE COURT: All right, sir.

25 (A PAUSE.)

1 MR. HARPOOTLIAN: Your Honor, could we ask the juror
2 to -- we need to put some things on the record.

3 THE COURT: All right. Take the juror to the jury
4 room, please.

5 (JUROR Z EXITS THE COURTROOM.)

6 THE COURT: Mr. Waters.

7 MR. WATERS: Yes, ma'am. Your Honor, in the affidavit
8 that was given by this particular juror, paragraph 10 said:

9 I had questions about Mr. Murdaugh's guilt, but I
10 voted guilty because I felt pressured by the
11 other jurors.

12 We would request an inquiry as to that, which is how
13 when this motion was filed she expressed the basis for her
14 verdict, which obviously this answer is a little different
15 now. We would request a brief inquiry from the Court as to
16 that specific issue.

17 THE COURT: All right.

18 MR. WATERS: Thank you, Your Honor.

19 THE COURT: Mr. Harpootlian.

20 MR. WATERS: Your Honor, as to two things. The first
21 thing is he is correct. She gave an affidavit. We would
22 ask Your Honor to let her read her affidavit to refresh her
23 memory of -- she said other things. They're very detailed
24 in here. We'd ask you to -- and let me hand up to the
25 Court a copy of her affidavit. I'd ask you to have her

1 read it before she's asked any ---

2 THE COURT: What I have here, Mr. Waters, for the
3 record, Mr. Waters, what I've been handed for the record is
4 something, affidavit of Juror now referred to as Z. It was
5 taken August the 14, 2023. It was sworn before Holli
6 Miller, paralegal for Mr. Harpootlian, and he would like
7 for me to give that to the juror and ask her to read it and
8 then ask her about it. I'm inclined to do that, but I want
9 to hear from you first.

10 MR. WATERS: Your Honor, again, if they want to
11 refresh her recollection, that's fine with the State. We
12 have no objection to that.

13 THE COURT: Very good. It will be done.

14 MR. HARPOOTLIAN: Your Honor, also we would ask that
15 you not ask the question that, that Mr. Waters asked you to
16 ask because it violates Rule 606(b) which provides:

17 Upon an inquiry of the validity of a verdict or
18 indictment, a juror may not testify to the effect
19 of anything upon that or any other juror's mind
20 or emotions.

21 THE COURT: What was the question he asked?

22 MR. HARPOOTLIAN: The last -- if you look at that
23 affidavit ---

24 MR. WATERS: It's paragraph 10, Your Honor.

25 MR. HARPOOTLIAN: Paragraph 10.

1 MR. WATERS: It's in the very affidavit he ---

2 MR. HARPOOTLIAN: She said she was influenced by other
3 jurors.

4 THE COURT: Yeah.

5 MR. HARPOOTLIAN: Okay.

6 THE COURT: I'm going to ask her about that. I'm
7 going to give her the affidavit, and then I'm going to
8 question her about it.

9 MR. HARPOOTLIAN: We would for the record to indicate
10 that we object to that under 606(b).

11 MR. WATERS: And, Your Honor, from our perspective,
12 she's put in ---

13 THE COURT: Now, you're the one that asked me to have
14 her look at this affidavit, but you're telling me I can't
15 question her about it? I deny ---

16 MR. HARPOOTLIAN: Not at all.

17 THE COURT: I deny that objection.

18 MR. HARPOOTLIAN: Your Honor, if it's something that's
19 inadmissible, you should not ask her about it.

20 THE COURT: Well, you want me to admit it and have her
21 examined on it.

22 MR. HARPOOTLIAN: No. I want you to have her read it
23 to refresh her memory about it.

24 THE COURT: Well, we're quibbling, Mr. Harpootlian.
25 We're quibbling about things that I'm not going to take

1 time to quibble about. My ruling is pursuant to your
2 request. I am going to allow the juror to examine her
3 affidavit, and then I'm going to question her about it.
4 That's my ruling. Your objection is overruled.

5 MR. HARPOOTLIAN: For the record, I just want to note,
6 Your Honor ---

7 THE COURT: You've noted 606. I hear you. Noted.

8 MR. HARPOOTLIAN: And am in no way waiving anything or
9 opening any door by asking you ---

10 THE COURT: Well, that's for ---

11 MR. HARPOOTLIAN: --- to examine her ---

12 THE COURT: --- a higher court to decide.

13 MR. HARPOOTLIAN: Well, I understand that. That's why
14 I want to make sure when they read this transcript there's
15 no confusion. I'm not asking you to put that into
16 evidence. I'm asking you to ---

17 THE COURT: Well, I don't see how in the world I can
18 question the juror about something and not put it into
19 evidence. You can't have your cake and eat it, too, Mr.
20 Harpootlian. You could have been very satisfied with the
21 answers that were already given, but you have chosen to ask
22 -- to ask ---

23 MR. HARPOOTLIAN: Withdraw the request.

24 THE COURT: Denied.

25 MR. HARPOOTLIAN: Your Honor, all the time we ask

1 witnesses ---

2 THE COURT: Mr. Harpootlian.

3 MR. HARPOOTLIAN: --- to examine a prior statement.

4 THE COURT: Mr. Harpootlian, I made my ruling. Please
5 take your seat.

6 All right, bring me Juror Z.

7 (JUROR Z RETURNS TO THE COURTROOM AND RETAKES THE
8 WITNESS STAND.)

9 BAILIFF: Juror is seated, Your Honor.

10 EXAMINATION BY THE COURT:

11 Q. Madame Juror, you gave an affidavit to a
12 representative of Mr. Harpootlian on August the 14, 2023.
13 And I have this in my hand at the present time, and I'm
14 going to hand it to you, and I'm going to ask that you read
15 it. Tell me when you've completed reading it, and then I'm
16 going to ask you some questions.

17 You're going to see four little boxes on this
18 affidavit. They are your name and the names of two of the
19 jurors. I will strike that out before it appears in the
20 record.

21 A. Okay.

22 Q. Just so you understand.

23 Mr. Bailiff, please pass this to the juror.

24 Q. Take a moment to read this.

25 A. To myself?

1 Q. Yes, ma'am.

2 (A PAUSE.)

3 A. Okay.

4 Q. Very good. The second -- the first paragraph, of
5 course, is the statement that you were in the case. Second
6 paragraph says:

7 Toward the end of the trial, after the
8 Presidents' Day break but before Mr. Murdaugh
9 testified, the clerk of court, Rebecca Hill, told
10 the jury, quote, not to be fooled, unquote, by
11 the evidence presented by Mr. Murdaugh's
12 attorneys, which I understood to mean that Mr.
13 Murdaugh would lie when he testifies.

14 Is that what your recollection is of that statement?

15 A. Yes, ma'am.

16 Q. Is there anything in the statement that on reflection
17 you think is not correct?

18 A. No, ma'am.

19 Q. All right. Number 3:

20 She also instructed the jury, quote, to watch him
21 closely, quote, immediately before he testified,
22 including, quote, look at his actions, quote,
23 and, quote, look at his movements, quote, which I
24 understood to mean he was guilty.

25 Is that an accurate recitation of your view of the

1 matter?

2 A. Yes, ma'am.

3 Q. Number 4, paragraph 4: Immediately after he testified,
4 the foreperson said Mr. Murdaugh was crying on cue. Is
5 that an accurate statement of what you saw and heard?

6 A. Yes, ma'am.

7 Q. 5:

8 The foreperson criticized the former foreperson
9 for handing Mr. Murdaugh a box of tissues when he
10 was crying on the stand while testifying about
11 his murdered son. She told the jury we cannot
12 interact with Mr. Murdaugh because that's what
13 the defense wants us to do.

14 Do you still stand by that recitation of that
15 conversation?

16 A. Yes, ma'am.

17 Q. All right. Number 6: The jury frequently discussed
18 the case during breaks before deliberation. Is that
19 correct?

20 A. Yes, ma'am.

21 Q. All right. Number 7: Toward the end of the trial, Ms.
22 Hill came into the jury room a lot. Is that your
23 recollection?

24 A. Yes, ma'am.

25 Q. Ms. Hill and the foreperson had private

1 conversations on multiple occasions. The
2 foreperson would tell the bailiff that she needed
3 to speak with Ms. Hill. Ms. Hill would arrive,
4 and then she and the foreperson would go to
5 another room for a private conversation. The
6 conversations typically lasted five to ten
7 minutes. The foreperson never said anything
8 about the content of the conversation. For
9 example, she never communicated logistical
10 information after these conversations. This
11 happened two or more times, more frequently
12 towards the end of the trial.

13 Is that still your recollection of the interaction?

14 A. Yes, ma'am.

15 Q. 9:

16 When we began deliberations, Ms. Hill told us
17 this shouldn't take us long, quote, and if we
18 deliberated past 11 PM, we would be taken
19 directly to a hotel. We had driven from our
20 homes that morning and were not prepared to stay
21 overnight. Additionally, smokers on the jury
22 asked to be allowed to take smoke breaks, but
23 they were told they could not smoke until after
24 the deliberations were complete.

25 Did you hear that?

1 A. Yes, ma'am.

2 Q. Including the business about the smokers?

3 A. Yes, ma'am.

4 Q. All right. Number 10: I had questions about Mr.
5 Murdaugh's guilt but voted guilty because I felt pressured
6 by the other jurors. Is that an accurate statement about
7 your verdict?

8 A. Yes, ma'am.

9 Q. After the verdict and immediately before
10 sentencing, Ms. Hill pressured the jury to speak
11 as a group to reporters from a television show.
12 Was -- is that an accurate statement of what she said?

13 A. Yes, ma'am.

14 Q. And did jurors, some jurors decline to do that?

15 A. Yes, ma'am.

16 Q. All right.

17 (A PAUSE.)

18 Q. Juror Z, I asked you previously was your verdict on
19 March 2, 2023, influenced in any way by communications from
20 Becky Hill, the clerk of court. You answered that question
21 yes. In light of what you said in the affidavit, which is:

22 I had questions about Mr. Murdaugh's guilt but
23 voted guilty because I felt pressured by the
24 other jurors.

25 Is that answer that I just read a more accurate

1 statement of how you felt?

2 MR. HARPOOTLIAN: Object to the form, Your Honor.

3 THE COURT: Overruled.

4 A. Yes, ma'am.

5 Q. All right. So, you do stand by the affidavit?

6 A. Yes, ma'am.

7 Q. Very good.

8 THE COURT: Thank you. You may go to the jury room,
9 and let me just explain to you what the procedure will be.
10 I'm calling the rest of the jurors, of course, one by one.
11 When I am finished with that, I will bring you out as a
12 group one more time, and then you are free to leave. You
13 don't have to stay, okay?

14 WITNESS: Okay.

15 THE COURT: Very good. You may go to the ---

16 MR. HARPOOTLIAN: Please the Court, Your Honor?

17 THE COURT: --- jury room.

18 MR. HARPOOTLIAN: Before you excuse her.

19 THE COURT: What's that?

20 MR. HARPOOTLIAN: Before this juror is excused but
21 after she steps out, I'd like to ---

22 THE COURT: All right, you may be excused.

23 (JUROR Z EXITS THE STAND AND EXITS THE COURTROOM.)

24 MR. WATERS: Your Honor, I, just very quickly, I do
25 have a redacted copy I can hand up to the Court if you want

1 to make that use of the Court's Exhibit.

2 THE COURT: That's good. What I'm going to try to do
3 is redact as I did in the -- as you did in the document
4 that you sent me, the identifying things.

5 Redacted now?

6 MR. WATERS: I have one right here, Your Honor.

7 THE COURT: Oh. Oh good. That's great. That would
8 be wonderful.

9 MR. WATERS: May I approach?

10 THE COURT: Sure. Show it to Mr. Harpootlian.

11 MR. HARPOOTLIAN: I've seen it.

12 THE COURT: Very good. Thank you. That's the one I
13 will give to the court reporter, but I think you can see
14 that I asked off of it. This is a Court's Exhibit, Court's
15 Exhibit 3.

16 (AFFIDAVIT OF JUROR Z MARKED INTO EVIDENCE AS COURT'S
17 EXHIBIT NUMBER 3.)

18 MR. WATERS: Your Honor, just to be clear, that does
19 still have the juror numbers in it. It might not have the
20 letters.

21 THE COURT: Yes.

22 What I'd ask you to do, Elizabeth, is take off the
23 juror numbers, just strike them through, and then where it
24 says affidavit of juror and gives a number, just strike
25 that out and put in pen Z. Thank you.

1 Yes, sir, Mr. Harpootlian.

2 MR. HARPOOTLIAN: Your Honor, we objected to the
3 questioning because this juror gave two statements under
4 oath, one in an affidavit and one here to you today. The
5 one here to you today was Becky Hill influenced her
6 verdict.

7 THE COURT: Yes.

8 MR. HARPOOTLIAN: The one she gave in an affidavit six
9 months ago was based on jurors. It could be both. Your
10 Honor picked out the one in the affidavit from six months
11 ago and said is that a more accurate statement. That
12 presupposes and suggests to her what she should say. And
13 we believe that this, this juror's testimony -- and, Your
14 Honor, I'm afraid what you're going to say is, well, she
15 said the affidavit was more accurate than what she
16 testified under oath here today and, therefore, I'm not
17 going to consider her testimony, and I think that's where
18 we're heading here.

19 I'd ask you to bring her back in, explain to her
20 there's nothing wrong with it both being true.

21 THE COURT: I decline to do that and overrule the
22 objection.

23 All right, Mr. Bailiff.

24 BAILIFF: May I approach?

25 THE COURT: Yes, sir.

1 (OFF-THE-RECORD BENCH CONFERENCE.)

2 THE COURT: Be at ease.

3 (OFF THE RECORD.)

4 THE COURT: Come to order. Come to order.

5 Counsel, I have to report this to you, and I am very,
6 very unhappy about it, but there's nothing to do but put it
7 on the record, and I then will proceed with questioning the
8 rest of the jurors.

9 The jurors' cell phones were not confiscated or taken
10 from them, and they tuned this thing in on Court TV and
11 listened to all what just went on. So, you may make
12 whatever statement you like to make, and then I'm going to
13 go on and question the jurors.

14 I will tell you in advance I am not going to stop the
15 proceedings or do anything to interrupt; I'm going to get
16 the rest of this on the record. You might imagine that
17 they no longer have their cell phones with them.

18 MR. HARPOOTLIAN: Your Honor, may we have a
19 five-minute recess to discuss what we need to put on the
20 record?

21 THE COURT: I'm not going to take all day on this
22 thing.

23 MR. HARPOOTLIAN: Well, Your Honor.

24 THE COURT: I report things as they come to me. I
25 will give you a couple of minutes, and then we're going --

1 they were late getting here. I didn't get to start on time
2 like I wanted to. So, I need to just calm down a little
3 bit, but I tell you. Don't take any long time.

4 Court will be in recess for five minutes.

5 (OFF THE RECORD.)

6 MS. SCHILLACI: Your Honor, may I approach?

7 THE COURT: Just a minute.

8 Now, you're about to do something that I have already
9 said I'm not going to allow to happen, and that is you've
10 got standing next to you a member of the team that
11 represents the juror, and I can tell you, Mr. Harpootlian,
12 I'm not -- I made a ruling early on that when Mr. McCulloch
13 was in court and when Mr. Bland was in court that I was not
14 going to allow -- I allowed their attorneys to participate
15 in formulating the procedure for this hearing. But I have
16 not -- I indicated that I would not allow the jury -- the
17 lawyers for jurors to participate in this hearing. And so
18 I'm not going to do that. I can just tell you that. And
19 if what you want to do is by indirection tell me what the
20 lawyers for the juror would say, I'm not going to accept
21 that.

22 MR. HARPOOTLIAN: Your Honor, my understanding is she
23 would like to approach to ask if the juror could be
24 excused.

25 THE COURT: No, not yet.

1 MS. SCHILLACI: Your Honor, I actually approached ---

2 THE COURT: Now, Mr. McCulloch can be excused. There
3 are still plenty of you lawyers, and you can do it. I
4 didn't want him to come to begin with. So, I love him
5 dearly and he can go any time, and I speak on behalf of Amy
6 McCulloch, his wife, when I tell you that.

7 MS. SCHILLACI: Your Honor, I actually was here to let
8 both of them know that I was going to ask to approach about
9 a security issue.

10 THE COURT: All right. Well, come up here. Lord
11 knows, I tell you what. Murphy's Law: what can go wrong
12 will go wrong at the worst possible time, and Murphy was an
13 optimist.

14 Please be seated.

15 (OFF-THE-RECORD BENCH CONFERENCE.)

16 THE COURT: Be at ease for a moment.

17 (OFF THE RECORD.)

18 THE COURT: Please be seated.

19 Let me place upon the record two things. First of
20 all, I have made certain now that a bailiff will be in the
21 jury room with these jurors. While I announced that many
22 times that is the way it was to run, why there wasn't a
23 juror -- in the jury room is something I don't know, but I
24 have asked that to be followed rigidly.

25 I've also asked -- I don't go into jury rooms. Never

1 have and never will, but I asked the bailiff to tell the
2 jurors that they are not to discuss any testimony that any
3 of them were giving.

4 I asked Juror Z whether she was comfortable because I
5 would be glad to place her in a separate room so that she's
6 not set upon by the rest of the jurors. She gave me a big
7 smile and said she is perfectly comfortable. I said at any
8 time you are not comfortable, you simply tell me and I will
9 have you placed in either my office or another jury room.
10 So, that's the way I left it with Juror Z. I think she's
11 fine, but I just wanted to make sure of that.

12 And again, on the record, that conversation I had with
13 her was outside the jury room. I don't go into the jury
14 room for any reason.

15 Very good. Mr. Bailiff.

16 Yes, sir.

17 MR. HARPOOTLIAN: For the record, Your Honor, we would
18 ask as juror are brought in, we would ask that you ask them
19 if they watched or heard anything this morning from their
20 cell phones or other jurors about what occurred in here
21 this morning with Juror Z and if so, what was it.

22 THE COURT: I'm going to say, ask each one of them
23 something about this. Whether it's exactly what you want,
24 I don't know, but I will ask them something about this or
25 make some direction to them about it. I'm not going to get

1 into who shot John about what they said in that jury room
2 today. I'm not going to do that, but I will try to, as
3 best I can, deal with this question of who of them heard
4 parts of the examination of Juror Z.

5 MR. HARPOOTLIAN: Your Honor, this morning I think you
6 already instructed them not to discuss this matter.

7 THE COURT: I have.

8 MR. HARPOOTLIAN: So if they have violated that, again
9 I think it's important for you to make that inquiry.

10 THE COURT: I'm going to make it as I see fit.

11 MR. HARPOOTLIAN: Thank you, Your Honor.

12 THE COURT: Yes, sir. All right.

13 Bring me Juror C.

14 BAILIFF: C?

15 THE COURT: Juror C.

16 (JUROR C ENTERS THE COURTROOM.)

17 JUROR C, BEING DULY SWORN,

18 TESTIFIES AS FOLLOWS:

19 CLERK: Have a seat.

20 EXAMINATION BY THE COURT:

21 Q. I will address you as Juror C because I redesignated
22 from your juror number at Colleton to letters of the
23 alphabet. I am trying to protect the anonymity of the
24 jurors as best I can. I can't promise you with all the
25 time that they spent seeing you all in the trial of the

1 case that they won't figure out who is who. But on my
2 record here, which is all I can control, I will address you
3 as Juror C.

4 A. Yes, ma'am.

5 Q. And before I begin, I understand that there may have
6 been some cell phones activated in the jury room and the
7 watching of the questioning of Juror Z. Did that take
8 place?

9 A. I know people were on cell phones, but I'm not sure of
10 what they were watching.

11 Q. Were you on a telephone?

12 A. No, ma'am, I was not.

13 Q. Very good. I don't think I have to go any further.

14 Thank you, sir.

15 You rendered a verdict on March the 2, 2023. The
16 verdict was read in open court, signed by the foreperson of
17 the jury, and the Court then said:

18 Madame Forelady and members of the jury, if that
19 is your verdict of each and every juror, please
20 let it be known by raising your hand.

21 The transcript then indicated that the jurors
22 complied. The jury was individually polled and each was
23 asked: Was that your verdict? Each juror answered yes.

24 Was that an accurate answer about your verdict at that
25 time?

1 A. Yes, ma'am.

2 Q. All right. Was your verdict based entirely on the
3 testimony, evidence, and law presented to you in the case?

4 A. Yes, ma'am.

5 Q. Did you hear Becky Hill, the clerk of court of
6 Colleton County, make any comment about this case before
7 your verdict?

8 A. No, ma'am. I wasn't privy to any of that.

9 Q. All right, sir. Was your verdict on March the 2,
10 2023, influenced in any way with any communications by the
11 clerk of court, Becky Hill, in this case?

12 A. No, ma'am, it was not.

13 THE COURT: Very good. That completes my questions.

14 You may retire to the jury room.

15 WITNESS: Thank you.

16 (JUROR C EXITS THE STAND AND EXITS THE COURTROOM.)

17 (A PAUSE.)

18 THE COURT: Bring me Juror F.

19 BAILIFF: F?

20 THE COURT: That's right.

21 (JUROR F ENTERS THE COURTROOM.)

22 JUROR F, BEING DULY SWORN,

23 TESTIFIES AS FOLLOWS:

24 EXAMINATION BY THE COURT:

25 Q. Good morning.

1 A. Good morning.

2 Q. I have designated the jurors by a letter, and that's
3 how I will be addressing you this morning, and I will be
4 addressing you as Juror F.

5 Now, I realize that you folks were on the jury for a
6 long time, over six weeks, and people may know who you are
7 despite my efforts to protect this record. But to the
8 extent I can, I will protect this record and your anonymity
9 as a juror in this record. So, I just wanted you to
10 understand why I am addressing you as Juror F.

11 This morning it was brought to my attention that some
12 jurors were perhaps on their phones listening or looking at
13 a broadcast of the questions to the first juror I examined,
14 Juror Z. Is that something that you know anything about or
15 experienced?

16 A. Yes, ma'am.

17 Q. Did you activate your own phone?

18 A. Another juror did.

19 Q. All right, and will what you saw and what you looked
20 at it in any way affect your testimony as you are about to
21 give it?

22 A. No, ma'am.

23 Q. Very good.

24 You rendered a verdict on March the 2, 2023. The
25 verdict was read in open court and signed by the foreperson

1 of the jury. The court then said:

2 Madame Forelady and members of the jury, if that
3 is your verdict of each and every juror, please
4 let it be known by raising your hand.

5 The transcript then indicates that the jurors
6 complied. The jury was individually polled and each was
7 asked: Was that your verdict? Each juror answered yes.
8 Each juror was then asked: Is that still your verdict?
9 Each juror answered yes.

10 Was your answer an accurate answer about your verdict
11 at that time?

12 A. Yes, ma'am.

13 Q. Was your verdict based entirely on the testimony,
14 evidence, and law presented to you in this case?

15 A. Absolutely.

16 Q. Did you hear Ms. Becky Hill make any comment about
17 this case before your verdict?

18 A. No, ma'am.

19 Q. Was that -- was your verdict on March the 2, 2023,
20 influenced in any way by any communications by the clerk of
21 court, Becky Hill, in this case?

22 A. Absolutely not.

23 Q. Very good.

24 THE COURT: That's all the questions I have.

25 MR. WATERS: None from the state, Your Honor.

1 MR. HARPOOTLIAN: Your Honor, we'd like to discuss a
2 matter with you before we finish with this juror.

3 THE COURT: You may go to your jury room, and keep
4 yourself ready. I don't know if I'm going to have any
5 further questions, but as far as I'm concerned, the
6 questions that I'm asking are at an end, but I need to
7 consult with the attorneys before I can dismiss you.

8 WITNESS: Yes, ma'am.

9 THE COURT: You may go to your jury room.

10 (JUROR F EXITS THE STAND AND EXITS THE COURTROOM.)

11 THE COURT: Yes, sir.

12 MR. HARPOOTLIAN: Your Honor, in interviewing the
13 clerk of court for Barnwell County, who worked as an
14 assistant to Ms. Hill, and interviewing the alternate juror
15 who was not -- wasn't needed, wasn't dismissed for any
16 particular reason other than wasn't needed, both of them
17 indicate they believe that Ms. Hill transported this juror
18 by her personal vehicle or a bailiff's vehicle at least
19 once during the trial. So, I would ask you to ask her if
20 during the trial, did Becky Hill either drive or ride with
21 you in a vehicle before or after court? If so, what, if
22 anything, did Becky Hill and you discuss?

23 THE COURT: What's your position on that, Mr. Waters?

24 MR. WATERS: Your Honor, I have no objection to that,
25 Your Honor.

1 THE COURT: All right, bring the juror. This is juror
2 C returning to the stand.

3 BAILIFF: Juror?

4 THE COURT: The same juror, yes.

5 (JUROR F RETURNS TO THE COURTROOM AND RETAKES THE
6 WITNESS STAND.)

7 EXAMINATION BY THE COURT:

8 Q. Thank you, ma'am. Of course you're still under oath.

9 A. Yes, ma'am.

10 Q. And I have this question for you. During the trial,
11 did Becky Hill either drive or ride with you in a vehicle
12 before or after court? If so, what, if anything, did Becky
13 Hill and you discuss? Do you recall that at all?

14 A. Could you please ask that again?

15 Q. Ma'am?

16 A. Could you please ask the question again?

17 Q. Sure.

18 A. Sorry.

19 Q. During the trial, did Becky Hill either drive or ride
20 with you in a vehicle before or after court?

21 A. No, ma'am.

22 Q. All right. Then I don't need to ask the second
23 question.

24 THE COURT: This will conclude your testimony. You
25 are dismissed. I'm going to ask the jurors to stay with me

1 until I've completed this process. Then you are free to
2 go.

3 WITNESS: Thank you.

4 THE COURT: Thank you so much.

5 (JUROR F EXITS THE STAND AND EXITS THE COURTROOM.)

6 THE COURT: All right, Mr. Harpootlian's question for
7 Juror F is Court's Exhibit Number 4.

8 (DEFENSE QUESTION MARKED INTO EVIDENCE AS COURT'S
9 EXHIBIT NUMBER 4.)

10 THE COURT: All right, bring me Juror L.

11 BAILIFF: L as in Lima?

12 THE COURT: L as in lima, yes, sir.

13 (JUROR L ENTERS THE COURTROOM.)

14 JUROR L, BEING DULY SWORN,

15 TESTIFIES AS FOLLOWS:

16 EXAMINATION BY THE COURT:

17 Q. Thank you so much. I have redesignated each of the
18 jurors in the record for this case, and so I will be
19 referring to you as Juror L, as in lima. And, you know,
20 y'all, all this jury, these people saw you for six weeks.
21 They may know, be able to identify you, but I'm trying to,
22 as best I can, protect your anonymity. You don't have to
23 talk to anybody about this at all. That's purely your
24 prerogative.

25 Juror L, before you came to testify and were sworn,

1 you were in the jury room with the other jurors.

2 A. Yes, ma'am.

3 Q. I understand that some may have looked at their cell
4 phones and looked at pictures of the proceedings as they
5 involved the first juror who was examined. Did you see any
6 of that?

7 A. People had their phones out, yes, ma'am.

8 Q. Did you look at any of it?

9 A. No, ma'am.

10 Q. All right, then I don't need to ask you anything
11 further about that.

12 You rendered a verdict on March the 2, 2023. The
13 verdict was read in open court, signed by the foreperson of
14 the jury, and the Court then said:

15 Madame Forelady and members of the jury, if that
16 is your verdict of each and every juror, please
17 let it be known by raising your hand.

18 The transcript then indicates the jurors complied.
19 The jury was individually polled and each was asked: Was
20 that your verdict? Each juror answered yes. Each juror
21 was then asked: Is that still your verdict? And each juror
22 answered yes.

23 Was that an accurate answer about your verdict at that
24 time?

25 A. Yes, Madame Justice, yes.

1 Q. Was your verdict based entirely on the testimony,
2 evidence, and law presented to you in this case?

3 A. Yes, Justice. Yes, ma'am.

4 Q. Did you hear Becky Hill, the clerk of court for
5 Colleton County, make any comment about this case before
6 your verdict?

7 A. No, ma'am.

8 Q. Was your verdict on March 2, 2023, influenced in any
9 way with any communications by the clerk of court, Becky
10 Hill, in this case?

11 A. No, ma'am.

12 Q. Very good.

13 THE COURT: Juror L, thank you, and you are dismissed.
14 I will send word back by the bailiff if there are any
15 further questions. I always ask the lawyers that before I
16 dismiss the juror completely and go to the next one.

17 Please know that I will keep you in case there's
18 anything I need to have the whole jury for at the end of
19 this proceeding. Then you are free to go, and you don't
20 have to speak to a soul about any of this. Thank you, sir.

21 WITNESS: Thank you, ma'am.

22 (JUROR L EXITS THE STAND AND EXITS THE COURTROOM.)

23 THE COURT: Anything further, Mr. ---

24 MR. WATERS: Nothing from the State, Your Honor.

25 MR. HARPOOTLIAN: Nothing from the defense, Your

1 Honor.

2 THE COURT: Very good.

3 Mr. Bailiff, bring me Juror E.

4 BAILIFF: E as in Edward?

5 THE COURT: Yes.

6 BAILIFF: Thank you.

7 (JUROR E ENTERS THE COURTROOM.)

8 JUROR E, BEING DULY SWORN,

9 TESTIFIES AS FOLLOWS:

10 EXAMINATION BY THE COURT:

11 Q. Sir, I will be addressing you as Juror E this morning.
12 I've redesignated the jurors by letter. I realize that you
13 sat on this jury in Colleton County for a lengthy period of
14 time, six weeks, and people may know who you are. But to
15 the extent I can make this record a record that protects
16 your anonymity, I am doing that. You don't have to speak
17 to a soul about this matter after you are finished, and
18 your service will be complete, as I'm sure you thought it
19 would be once you rendered your verdict.

20 A. Thank you.

21 Q. I have these questions. You rendered a verdict -- oh,
22 yes. If was brought to my attention that cell phones of
23 the jurors were accessed in the jury room for a time, and
24 that some were able to examine the broadcast of the
25 testimony of the first juror called Juror Z. Was your cell

1 phone one of those activated to look at the proceedings?

2 A. No, ma'am.

3 Q. Did you look in the proceedings on any other cell
4 phone?

5 A. No, ma'am.

6 Q. Thank you.

7 Now, you rendered your verdict on March the 2, 2023.
8 The verdict was read in open court, signed by the
9 foreperson of the jury. The jury then said -- I mean, the
10 Court then said:

11 Madame Forelady and members of the jury, if that
12 is your verdict of each and every juror, please
13 let it be known by raising your hand.

14 The transcript then indicates the jurors complied.
15 The jury was individually polled and each was asked: Was
16 that your verdict? Each juror answered yes. Each juror
17 was then asked: Is that still your verdict? And each juror
18 answered yes.

19 Was that an accurate answer about your verdict at that
20 time?

21 A. It was.

22 Q. Was your verdict based entirely upon the testimony,
23 evidence, and law presented to you in this case?

24 A. Yes.

25 Q. Did you hear Ms. Becky Hill make any comment about

1 this case before your verdict?

2 A. No.

3 Q. Was your verdict on March the 2, 2023, influenced in
4 any way with any communications by the clerk of court,
5 Becky Hill, in this case?

6 A. No.

7 THE COURT: Thank you, sir. That concludes my
8 questions. You may go to the jury room. I always consult
9 with the lawyers to see if there any further questions. If
10 there are not, please stay with the jury until I dismiss
11 all of you. I'm hoping that won't be too much longer.

12 WITNESS: Yes, ma'am.

13 THE COURT: Thank you, sir.

14 WITNESS: Thank you.

15 (JUROR E EXITS THE STAND AND EXITS THE COURTROOM.)

16 THE COURT: All right, anything from the State?

17 MR. WATERS: Nothing from the State, Your Honor.

18 THE COURT: From the defendant?

19 MR. HARPOOTLIAN: Nothing from defense, Your Honor.

20 THE COURT: Very good.

21 Bring me Juror P, as in Paul.

22 (JUROR P ENTERS THE COURTROOM.)

23 JUROR P, BEING DULY SWORN,

24 TESTIFIES AS FOLLOWS:

25 EXAMINATION BY THE COURT:

1 Q. Good morning.

2 A. Good morning, ma'am.

3 Q. I will be addressing you as Juror P, as in Paul. I
4 tried to redesignate the jurors without their number and,
5 of course, without their name.

6 Now, I realize you spent six long weeks hearing this
7 case in open court in Colleton, and many people may know
8 who you are anyway.

9 A. Yes, ma'am.

10 Q. To the extent that I can make this record such that it
11 protects your anonymity, I will do that.

12 A. Yes, ma'am.

13 Q. And you certainly are not obligated to talk with one
14 soul about this matter after your testimony is complete.

15 A. Okay.

16 Q. Juror P, I understand that before I began to receive
17 your testimony, that at the beginning when Juror Z was
18 being examined that some jurors may have had cell phones
19 and accessed the proceedings. Did you have your cell
20 phone?

21 A. No, ma'am.

22 Q. Did you examine any cell phone broadcasts?

23 A. There was a couple people, but I have no clue what
24 they were viewing.

25 Q. Yes, sir. Okay. Did any of this activity by other

1 people in viewing this material have any impact on you in
2 terms of your testimony today?

3 A. No, ma'am.

4 Q. All right.

5 You rendered a verdict on March the 2, 2023. The
6 verdict was read in open court, signed by the foreperson of
7 the jury. The Court then said:

8 Madame Forelady and members of the jury, if that
9 is your verdict of each and every juror, please
10 let it be known by raising your right hand.

11 The transcript then indicates the jurors complied.
12 The jury was individually polled and each was asked: Was
13 that your verdict? Each juror answered yes. Each juror
14 was then asked: Is that still your verdict? And each juror
15 answered yes.

16 Was that an accurate answer about your verdict at that
17 time?

18 A. Yes, ma'am.

19 Q. Was your verdict based entirely on the testimony,
20 evidence, and law presented to you in this case?

21 A. It was.

22 Q. Did you hear Becky Hill, clerk of court for Colleton
23 County, make any comment about this case before your
24 verdict?

25 A. I did, yes, ma'am.

1 Q. What did she say?

2 A. It was the day that Mr. Murdaugh was taking the stand.

3 Q. Yes, sir.

4 A. And she made the comment about watch his body
5 language.

6 Q. About watch his?

7 A. Watch his body language.

8 Q. His body language, I see.

9 A. Yes, ma'am.

10 Q. And what else?

11 A. That's all I can recall.

12 Q. All right, sir. Was your verdict on March the 2,
13 2023, influenced in any way with any communications by the
14 clerk of court, Becky Hill, in this case?

15 A. No.

16 THE COURT: All right. That completes my questions,
17 Juror E -- P, Juror P. You may go to your jury room. You
18 are free to refuse to discuss this with anybody. That's
19 your prerogative. You're not required to talk about this
20 anymore.

21 WITNESS: Yes, ma'am.

22 THE COURT: That is your business. I have tried to do
23 the best I could to confine this thing, but I appreciate
24 your service. Thank you, sir, and you may go to your jury
25 room.

1 WITNESS: Thank you, ma'am.

2 (JUROR P EXITS THE STAND AND EXITS THE COURTROOM.)

3 THE COURT: Any question by the State?

4 MR. WATERS: Nothing from the State, Your Honor.

5 THE COURT: All right, by the defendant?

6 MR. HARPOOTLIAN: Nothing, Your Honor.

7 THE COURT: All right, bring me Juror O.

8 BAILIFF: O?

9 THE COURT: O.

10 (JUROR O ENTERS THE COURTROOM.)

11 JUROR O, BEING DULY SWORN,

12 TESTIFIES AS FOLLOWS:

13 EXAMINATION BY THE COURT:

14 Q. Good morning, Juror O. I have redesignated the jurors
15 by letter in this record so as to try to protect your
16 anonymity as best I can.

17 Now, I realize you sat on this case for six weeks in
18 open court in Colleton County. Many may know your
19 identity, but to the extent I can for the record of this
20 matter, I'm trying to preserve your identity from any
21 disclosure in this court.

22 Juror O, I understand that several jurors may have
23 activated their cell phones during the testimony of the
24 first juror and looked at the proceedings. Are you aware
25 of that?

1 A. Yes, ma'am.

2 Q. Did you activate your cell phone?

3 A. No, ma'am, I did not.

4 Q. Did you watch any of the other cell phones?

5 A. No, ma'am, I did not.

6 Q. Very good.

7 You rendered a verdict on March the 2, 2023. The
8 verdict was read in open court, signed by the foreperson of
9 the jury. The Court then said:

10 Madame Forelady and members of the jury, if that
11 is your verdict of each and every juror, please
12 let it be known by raising your right hand.

13 The transcript then indicates the jurors complied.
14 The jury was individually polled and each was asked: Was
15 that your verdict? Each juror answered yes. Each juror
16 was then asked: Is that still your verdict? And each juror
17 answered yes.

18 Was that an accurate answer about your verdict at that
19 time?

20 A. Yes, ma'am, it was.

21 Q. Did you hear Ms. Becky Hill make any comment about
22 this case before your verdict?

23 A. No, ma'am, I did not.

24 Q. Was your verdict on March the 2, 2023, influenced in
25 any way with any communications by the clerk of court,

1 Becky Hill, in this matter?

2 A. No, ma'am, it was not.

3 Q. Very good.

4 THE COURT: That concludes my questions. You may
5 return to your jury room. I ask that you stay until I
6 complete the questioning of the jurors. You don't have to
7 talk to a soul about this matter. That is purely your
8 prerogative, and if you have any difficulties in that
9 matter, let me know.

10 WITNESS: Yes, ma'am.

11 THE COURT: You are excused.

12 (JUROR O EXITS THE STAND.)

13 MR. WATERS: Your Honor? Very quickly, I think
14 question 2, you omitted question 2.

15 THE COURT: Resume your seat.

16 EXAMINATION BY THE COURT:

17 Q. Was your verdict based entirely on the testimony,
18 evidence, and law presented to you in this case?

19 A. Yes, ma'am, it was.

20 Q. Very good.

21 THE COURT: You're excused.

22 (JUROR O EXITS THE STAND AND EXITS THE COURTROOM.)

23 THE COURT: Thank you, Mr. Waters.

24 All right, bring me Juror Y.

25 BAILIFF: Y.

1 MR. HARPOOTLIAN: No further questions, Your Honor.

2 THE COURT: Oh, excuse me. Sorry.

3 Nothing further, Mr. Waters?

4 MR. WATERS: Nothing from the state.

5 THE COURT: Thank you.

6 (JUROR Y ENTERS THE COURTROOM.)

7 JUROR Y, BEING DULY SWORN,

8 TESTIFIES AS FOLLOWS:

9 EXAMINATION BY THE COURT:

10 Q. Good morning, sir.

11 A. Good morning.

12 Q. I will be addressing you as Juror Y.

13 A. Okay.

14 Q. I've tried to re-identify the jurors so as to preserve
15 your anonymity in this record.

16 A. Thank you.

17 Q. I know that you sat on this case for six weeks in open
18 court, and many have seen you. They may know who you are,
19 but to the extent I can preserve your anonymity in the
20 record of this case, I have tried to do so.

21 A. Thank you.

22 Q. You are completely free not to talk to a soul about
23 this matter. That's always your prerogative.

24 I understand that before you came out here, when the
25 first juror to be examined was being examined that some

1 jurors may have activated their cell phones. Were you one
2 who activated your cell phone?

3 A. No, ma'am.

4 Q. Were you aware that some cell phones might've been
5 activated?

6 A. I, I was aware after the fact.

7 Q. All right, sir. Did you hear anything about the
8 examination of the first juror?

9 A. No, ma'am.

10 Q. Thank you, sir.

11 You rendered a verdict on March the 2, 2023. The
12 verdict was read in open court, signed by the foreperson of
13 the jury. The Court then said:

14 Madame Forelady and members of the jury, if that
15 is your verdict of each and every juror, please
16 let it be known by raising your right hand.

17 The transcript then indicates the jurors complied.
18 The jury was individually polled and each was asked: Was
19 that your verdict? Each juror answered yes. Each juror
20 was then asked: Is that still your verdict? And each juror
21 answered yes.

22 Was that an accurate answer about your verdict at that
23 time?

24 A. Yes, ma'am.

25 Q. Was your verdict based entirely on the testimony,

1 evidence, and law presented to you in this case?

2 A. Yes, ma'am.

3 Q. Did you hear Ms. Becky Hill make any comment about
4 this case before your verdict?

5 A. Not to me, ma'am.

6 Q. Did you hear her make a comment to anybody else?

7 A. Not that I'm aware of, ma'am.

8 Q. All right, sir. So, you don't remember any details of
9 any conversation?

10 A. No, ma'am.

11 Q. All right, sir. Was your verdict on March the 2,
12 2023, influenced in any way by any communications by the
13 clerk of court, Becky Hill, in this case?

14 A. No, ma'am.

15 THE COURT: Thank you, sir. That concludes my
16 questions. I am going to excuse you. Stay together with
17 the other jurors until I have completed my examination, and
18 then you will be free to go.

19 WITNESS: Thank you.

20 THE COURT: Thank you so much.

21 WITNESS: Thank you.

22 (JUROR Y EXITS THE STAND AND EXITS THE COURTROOM.)

23 THE COURT: Anything further from the State?

24 MR. WATERS: Nothing from the State, Your Honor.

25 THE COURT: From the defense?

1 MR. HARPOOTLIAN: Nothing from defense, Your Honor.

2 THE COURT: Very good.

3 Bring me Juror W.

4 JUROR W, BEING DULY SWORN,

5 TESTIFIES AS FOLLOWS:

6 EXAMINATION BY THE COURT:

7 Q. Good morning.

8 A. Good morning.

9 Q. Good morning.

10 Q. I'll address you as Juror W. I have redesignated by
11 letter the identities of the jurors as I question them
12 today.

13 A. Yes, ma'am.

14 Q. And, you know, you sat on this jury for six long
15 weeks, and I'm sure that those who were there in the trial
16 for a long period of time may know who you are. I'm just
17 doing the very best I can to make your participation in
18 this matter anonymous, and I will preserve that anonymity.
19 You are free to not talk to one single soul about this if
20 you don't want to. That's purely your prerogative.

21 A. Yes, ma'am.

22 Q. I understand that when the first juror was being
23 questioned, some members of the jury, as you were back in
24 the jury room, may have activated their cell phones. Were
25 you one who activated your cell phone?

1 A. No, ma'am. I left my phone in the car.

2 Q. And did you hear any information coming from anybody
3 else's cell phones about that examination?

4 A. I did.

5 Q. All right. Does that have any impact on the testimony
6 you are going to give today?

7 A. No, ma'am.

8 Q. Very good.

9 You rendered a verdict on March the 2, 2023. The
10 verdict was read in open court, signed by the foreperson of
11 the jury. The Court then said:

12 Madame Forelady and members of the jury, if that
13 is your verdict of each and every juror, please
14 let it be known by raising your hand.

15 The transcript then indicates the jurors complied.
16 The jury was individually polled and each was asked: Was
17 that your verdict? Each juror answered yes. Each juror
18 was then asked: Is that still your verdict? Each juror
19 answered yes.

20 Was that an accurate answer about your verdict at that
21 time?

22 A. Yes, ma'am.

23 Q. All right. Was your verdict based entirely on the
24 testimony, evidence, and law presented to you in this
25 matter?

1 A. Yes, ma'am.

2 Q. Did you hear Ms. Becky Hill, the clerk of court for
3 Colleton County, make any comment about this case before
4 your verdict?

5 A. No, ma'am.

6 Q. Was your verdict on March the 2, 2023, influenced in
7 any way with any communications by the clerk of court,
8 Becky Hill, in this matter?

9 A. No, ma'am.

10 Q. Very good.

11 THE COURT: That is the end of my questions, Madame
12 Juror. You may go to the jury room. Stay with the jury
13 until I have completed the questioning. Then you are free
14 to go.

15 WITNESS: Okay.

16 THE COURT: And you are free not to say anything you
17 don't want to say, and if anybody upsets you or bothers you
18 in any way about that, you just let the Court know.

19 WITNESS: Yes, ma'am.

20 THE COURT: Thank you.

21 WITNESS: Thank you.

22 (JUROR W EXITS THE STAND AND EXITS THE COURTROOM.)

23 THE COURT: Any further questions from the State?

24 MR. WATERS: Nothing from the state, Your Honor.

25 THE COURT: Any further questions from the defense?

1 MR. HARPOOTLIAN: Nothing further from defense.

2 THE COURT: Very good.

3 All right, bring me Juror, Juror Q.

4 (JUROR Q ENTERS THE COURTROOM.)

5 JUROR Q, BEING DULY SWORN,

6 TESTIFIES AS FOLLOWS:

7 EXAMINATION BY THE COURT:

8 Q. Good morning.

9 A. Morning.

10 Q. I will be referring to you as Juror Q. I have
11 redesignated every one of the jurors by a letter, and in
12 that way I'm trying to protect your anonymity in these
13 proceedings.

14 Now, I realize that you spent six long weeks hearing
15 this case in open court in Colleton County, and some folk
16 may know who you are, but I'm trying to protect your
17 anonymity in these proceedings as best I can.

18 You don't have to speak to a soul about these
19 proceedings after you have completed your testimony.
20 That's purely up to you, and if anybody hassles you about
21 anything, the Court stands ready to assist you.

22 You rendered a verdict on March the 2, 2023. The
23 verdict was read in open court, signed by the foreperson of
24 the jury. The Court then said:

25 Madame Forelady and members of the jury, if that

1 is your verdict of each and every juror, please
2 let it be known by raising your hand.

3 The transcript then indicates the jurors complied.
4 The jury was individually polled and each was asked: Was
5 that your verdict? Each juror answered yes. Each juror
6 was then asked: Is that still your verdict? Each juror
7 answered yes.

8 Was that an accurate answer?

9 A. Yes, ma'am, it was.

10 Q. About your verdict at that time?

11 A. Yes.

12 Q. All right. Was your verdict based entirely on the
13 testimony, evidence, and law presented to you in this case?

14 A. Yes, it was.

15 Q. Did you hear Ms. Becky Hill make any comment about
16 this case before your verdict?

17 A. No, ma'am.

18 Q. Was your verdict on March the 2, 2023, influenced in
19 any way with any communication by the clerk of court, Becky
20 Hill, in this case?

21 A. No, ma'am, it was not.

22 Q. Very good.

23 THE COURT: You may be excused, and if you'll just
24 stay in the jury room until we've completed the examination
25 of all the jurors. Thank you, sir.

1 WITNESS: Thank you.

2 MR. WATERS: Your Honor, very briefly, the cell phone
3 inquiry.

4 THE COURT: Yes.

5 MR. WATERS: Of the various jurors.

6 THE COURT: Yes.

7 MR. WATERS: I didn't know if you wanted to have that
8 with this particular juror as well.

9 THE COURT: Sure.

10 Q. I understand that before I began questioning you or
11 the other jurors, on the questioning of the first juror,
12 some jurors in the assembly room may have activated their
13 cell phones. Were you one of the jurors that activated
14 your cell phone?

15 A. Yes, ma'am.

16 Q. All right, and was anything that you heard at that
17 time something that has any influence or effect on the
18 testimony you now give under oath?

19 A. No, ma'am.

20 Q. All right.

21 THE COURT: Thank you.

22 Anything further?

23 You may go to the jury room.

24 WITNESS: Thank you.

25 (JUROR Q EXITS THE STAND AND EXITS THE COURTROOM.)

1 THE COURT: For the state?

2 MR. WATERS: Nothing, Your Honor.

3 MR. HARPOOTLIAN: Nothing, Your Honor.

4 THE COURT: All right.

5 Bring me Juror K.

6 (JUROR K ENTERS THE COURTROOM.)

7 JUROR K, BEING DULY SWORN,

8 TESTIFIES AS FOLLOWS:

9 EXAMINATION BY THE COURT:

10 Q. Good morning.

11 A. Good morning.

12 Q. I will be addressing you as Juror K. I've
13 redesignated each of you jurors, gave you a letter for
14 purposes of this hearing. I'm trying to protect your
15 anonymity as best I can.

16 Now, I realize you sat for six long weeks on this case
17 in Colleton County, and many folk may know who you are.
18 But on the record of this matter, as best I can, I'm trying
19 to preserve your anonymity.

20 Please know that you don't have to answer anybody's
21 questions about this matter in any way, shape, or form.
22 It's purely up to you, and if anything is done that you
23 feel is harassing or makes you uncomfortable, you contact
24 the Court. I will try to do as best I can to help in that
25 situation.

1 A. Yes, ma'am.

2 Q. All right. I understand that during the testimony of
3 the first juror, some opened their cell phones in the jury
4 room, in our jury assembly room here. Were you one who
5 opened your cell phone?

6 A. Yes, ma'am.

7 Q. Did you listen to the -- or watch the broadcast of
8 that first juror's examination?

9 A. It was on Facebook.

10 Q. Ma'am?

11 A. It was on Facebook.

12 Q. It was on Facebook, and you watched it?

13 A. No. We closed it.

14 Q. All right. Did anything that you heard in that
15 Facebook cell phone access impact or influence your
16 testimony in this matter in any way?

17 A. No.

18 Q. All right.

19 You rendered a verdict on March the 2, 2023. The
20 verdict was read in open court, signed by the foreperson of
21 the jury. The Court then said:

22 Madame Forelady and members of the jury, if that
23 is your verdict of each and every juror, please
24 let it be known by raising your right hand.

25 The transcript then indicates the jurors complied.

1 The jury was individually polled and each was asked: Was
2 that your verdict? Each juror answered yes. Each juror
3 was then asked: Is that still your verdict? Each juror
4 answered yes.

5 Was that an accurate answer about your verdict at that
6 time?

7 A. Yes.

8 Q. Was your verdict based entirely on the testimony,
9 evidence, and law presented to you in this case?

10 A. Yes.

11 Q. Did you hear Ms. Becky Hill, clerk of court for
12 Clarendon County -- Colleton, County make any comment about
13 this case before your verdict?

14 A. No.

15 Q. Was your verdict on March the 2, 2023, influenced in
16 any way with any communications by the clerk of court,
17 Becky Hill, in this case?

18 A. No.

19 THE COURT: Thank you, ma'am. That completes my
20 questions. I'll let you go to the jury room now. I will
21 then ask the attorneys whether there are any further
22 questions. If there are not, please just stay in the jury
23 assembly room until I give you the word that you are all to
24 come out one more time and I dismiss you. Thank you,
25 ma'am.

1 (JUROR K EXITS THE STAND AND EXITS THE COURTROOM.)

2 THE COURT: For the State?

3 MR. WATERS: Nothing from the State.

4 THE COURT: For the defense?

5 MR. HARPOOTLIAN: Nothing, Your Honor.

6 THE COURT: Very good. This then completes the
7 questioning of the jurors. I will ask the jurors to come
8 into the open courtroom again, thank them, and dismiss
9 them. Anything further before I do that?

10 MR. WATERS: Nothing from the state, Your Honor.

11 MR. HARPOOTLIAN: Beg the court's indulgence one
12 moment.

13 (A PAUSE.)

14 MR. HARPOOTLIAN: Please the Court, Your Honor? I
15 would move for the record that I be able to question Juror
16 Z to follow up on what I believe the Court is confused
17 about.

18 THE COURT: Very good. I deny the request.

19 MR. HARPOOTLIAN: Thank you.

20 THE COURT: Anything further?

21 MR. HARPOOTLIAN: No, Your Honor.

22 THE COURT: All right, bring me the jury.

23 (A PAUSE.)

24 (THE JURORS ENTER THE COURTROOM.)

25 BAILIFF: The jury is seated, Your Honor.

1 THE COURT: Thank you.

2 Ladies and gentlemen of the jury, that completes the
3 Court's examination of the jurors in this matter. I can
4 only deeply apologize to you for having to inconvenience
5 you so long after the trial of the case to come here, and I
6 very much appreciate your candor. There are no right or
7 wrong answers to the questions I asked you, but I think
8 each of you to the best of your ability answered the
9 questions, and I am deeply grateful for that, as is the
10 State of South Carolina, as is the defendant.

11 You don't have to speak to a soul about this matter if
12 you don't want to. That is purely your prerogative. If
13 there's any difficulty you encounter about this hearing
14 that I can help with, please contact the Court and I will
15 be happy to do so.

16 You are dismissed at this time; you may go. Thank you
17 for your service.

18 Excuse the jurors.

19 (THE JURORS EXIT THE COURTROOM.)

20 THE COURT: All right, Mr. Waters, is the clerk of
21 court available?

22 MR. WATERS: Yes, ma'am. It's my understanding she
23 is, and the State would be prepared to call her if the
24 Court's ready.

25 THE COURT: All right.

1 MR. WATERS: I do not believe she's in the courtroom.
2 She, she -- I believe she's at a location -- Mr Lewis is
3 here just a block or two away, so if we can take a brief
4 recess, we'd be prepared to present her after that.

5 THE COURT: Well, I will entertain going on and taking
6 an early lunch break. I don't know how long Ms. Hill's
7 testimony is going to take, but that might be a better
8 thing than hanging around here. I think that's what I
9 would prefer to do.

10 Mr. Harpootlian.

11 MR. HARPOOTLIAN: Your Honor, I need sustenance.

12 THE COURT: Okay. Well, good. I think I will join
13 you in that.

14 What I will do is I will recess court until 1:15.

15 MR. WATERS: Thank you, Your Honor.

16 THE COURT: Please return at 1:15.

17 MR. HARPOOTLIAN: Thank you, Your Honor.

18 THE COURT: Court will be in recess.

19 (OFF THE RECORD.)

20 THE COURT: Please be seated.

21 All right, is the State ready to proceed?

22 MR. WATERS: Ready to proceed. I think they're still
23 getting the defendant ready to sit down.

24 THE COURT: Very good. We certainly will wait on
25 that.

1 Mr. Harpootlian.

2 MR. HARPOOTLIAN: Your Honor, once he's seated, I have
3 a matter I need to put on the record.

4 THE COURT: All right. Sure.

5 (A PAUSE.)

6 MR. HARPOOTLIAN: Please the Court, Your Honor?

7 THE COURT: Yes, sir.

8 MR. HARPOOTLIAN: Your Honor, we last week discussed
9 the standard by which you would proceed during this
10 proceeding and evaluate the evidence. We argued that you
11 should use a case called *Remmer*. You rejected that, but
12 under any standard, as I understand it, the burden of proof
13 is on the defendant to show certain statements were made or
14 certain conduct happened.

15 So far, Your Honor has called as Court's witnesses
16 twelve witnesses. We were not offered the opportunity to
17 cross-examine them, and so we've not had the opportunity to
18 present any evidence whatsoever. And before the State
19 presents evidence, I believe that we should be able to call
20 witnesses, and I would ask the Court to allow us to present
21 some evidence before the State comes up with, with
22 rebuttal.

23 And, by the way, under the cases you've cited, they
24 have no affirmative obligation to present anything at this
25 point; there's no requirement that they present anything.

1 So, I would ask you allow us to call a witness or two
2 before you make a decision as to whether or not they need
3 to call a witness.

4 THE COURT: The State.

5 MR. WATERS: Well, Your Honor, we obviously have
6 argued very extensively some of the cases, and I think the
7 South Carolina jurisprudence is very clear that while an
8 evidentiary hearing is appropriate, and that's what we're
9 doing here, that that manner of inquiry is, is purely
10 within the discretion as the trial judge sees fit. This is
11 not a criminal trial where we're here with a jury to
12 present the normal, you know, criminal trial process. This
13 is a inquiry very much directed by the trial court and what
14 the trial court thinks is appropriate. And so the State
15 certainly is comfortable with the inquiry the Court is
16 conducting.

17 And my understanding is as far as putting up Ms. Hill,
18 this is the manner in which the Court wanted that evidence
19 presented, and so we're happy to comply in that regard.
20 But we think that, that, that this inquiry is within your
21 discretion, and we have no issue with the manner in which
22 Your Honor has proposed to conduct it.

23 MR. HARPOOTLIAN: Please the Court, Your Honor?
24 Certainly the conduct of this hearing is within your
25 discretion. What is not is who has the burden of proof.

1 We do and we can't meet that burden if we can't call
2 witnesses. And so I ask the Court to allow us to call
3 witnesses, and if at the conclusion of us presenting those
4 you believe the State has -- is required to present
5 evidence to counter that evidence or in some way -- I'm not
6 quite -- since *Remmer* is not the standard, I'm not quite
7 sure what they have to prove, but that -- that's an
8 argument down the line.

9 I believe we ought to be able to call witnesses now,
10 and we have witnesses which would substantiate the burden
11 we have to show you that statements were made by the clerk
12 of court, and that those statements had impact on a juror
13 or jurors.

14 THE COURT: I've got a couple of reactions to that.
15 Number one, the pretrial was the time to figure out exactly
16 what we were going to do here. And I think it comes at the
17 last minute for you to now come and say we want to present
18 witnesses. You briefed the matter of witnesses; we had a
19 long pretrial. After I made my rulings on what I thought
20 the scenario was that should be used based on *State v.*
21 *Green*, you lodged objections to that, but you did not offer
22 at that time any information about who you wanted to call
23 other than this lengthy filing in one of your briefs. It
24 comes pretty late in time, in my view, for you to do that
25 now.

1 The second thing is I gave the defense a big break
2 when I allowed you to be the cross-examiner and the State
3 to be the presenter of Becky Hill. She's really a witness
4 that each side needs to prove their view of what happened
5 in this matter. The State puts her up to try to show that
6 there was no impact by anything she said and that some of
7 the things your witnesses say were said she says were not.
8 So, there's a conflict in the evidence there.

9 I'm not going to rearrange the situation and go to any
10 witnesses of yours right now. I'm going to see what Ms.
11 Hill has to say, and then afterwards we can talk about
12 whether there's any need for any other witnesses.

13 MR. HARPOOTLIAN: Your Honor, if -- just factually
14 argue this with you. We did not understand. We assumed
15 you'd adopt *Remmer* because that was ---

16 THE COURT: Well, I don't know why you assumed that
17 when the ---

18 MR. HARPOOTLIAN: Because that's the ---

19 THE COURT: --- South Carolina Supreme Court said very
20 clearly we do not go by the guidance of the 1950s case of
21 *US v. Remmer*.

22 MR. HARPOOTLIAN: That's -- we do not believe that's
23 what Justice Kittredge has said in ---

24 THE COURT: He said it straight out as clear as a bell
25 can be, but I've ruled on that.

1 MR. HARPOOTLIAN: Yes, ma'am.

2 THE COURT: And, and ---

3 MR. HARPOOTLIAN: All I'm saying is ---

4 THE COURT: --- the South Carolina Supreme Court is
5 going to have plenty of chances to decide if they want to
6 modify *Green*.

7 MR. HARPOOTLIAN: Well, when we were -- we were
8 somewhat taken aback by your ruling as a result, and that
9 ruling came at a point where we hadn't -- we didn't know
10 what these witnesses were going to testify to. So, we now
11 ---

12 And, by the way, you set aside three days for this.
13 What's the hurry? This gentleman is, you know, is facing
14 life with no parole. We should take this in a very
15 deliberate way. He's got a Fourteenth Amendment right to
16 have-- to ensure that he had a fair trial.

17 THE COURT: All these arguments should have been made
18 before this time.

19 MR. HARPOOTLIAN: Why?

20 THE COURT: Well, Mr. Harpootlian, I've told you how
21 I'm going to handle this thing. Your objections are noted
22 and they're on the record. Right now what I'm going to do
23 is what I said I would do. We're going to call Ms. Hill
24 and see what she has to say. I have no idea who all you
25 want to call as witnesses or whether they're here in the

1 courtroom at the present time.

2 MR. HARPOOTLIAN: They are.

3 THE COURT: But we'll get to that after Ms. Hill
4 testifies.

5 MR. HARPOOTLIAN: Yes, Your Honor.

6 THE COURT: All right, sir.

7 Just one moment.

8 (A PAUSE.)

9 THE COURT: Let me go to a little something here that
10 I'm just getting an email on and put this on the record
11 right now.

12 Now, I have a communication from Mr. McCulloch, and
13 it's only -- that is copied to Mr. Harpootlian, Mr.
14 Griffin, Mr. Waters, and Attorney General Wilson, and
15 basically it says his client, Juror Z, wants to enhance the
16 testimony she gave with some sort of affidavit that he
17 wants me to look at, and I have looked at.

18 I will -- I want to hear from the State and the
19 defense, but I can tell you I'm not inclined to get back
20 into the testimony that's already been taken by these
21 jurors. Her inconsistencies, whatever they are, are in the
22 record, and she now wants to have another bite at the
23 apple. I'm not at all enthusiastic about that.

24 But I will hear from you, Mr. Waters, first.

25 MR. WATERS: Your Honor, the juror's testified; the

1 Court conducted the inquiry that needed to be conducted.
2 She answered the questions. I would agree with Your Honor
3 that, that multiple bites of the apple are not warranted.
4 We believe we should proceed forward.

5 THE COURT: All right.

6 Mr. Harpootlian.

7 MR. HARPOOTLIAN: Your Honor, I'd note two things.
8 The first thing is we asked to be able to examine this
9 juror. You denied that request. Number two, she's not our
10 witness; she's not Mr. Waters's witness. She was the
11 Court's witness and a juror that -- and you commended all
12 of them on their honesty. She's attempting to be honest.
13 This is -- this process we're going through is an effort to
14 seek the truth. This is the truth. I don't understand why
15 it can't come in.

16 THE COURT: Okay, I think I understand what your
17 position is, Mr. Harpootlian.

18 MR. HARPOOTLIAN: And we'd ask you to make it part of
19 the record. You can say you're going to consider it, not
20 going to consider it, but it should be a part of the
21 record.

22 THE COURT: Well, I'll give some thought to whether
23 this thing should be a part of the record, but I can tell
24 you this. Witnesses don't get to get on the stand and
25 testify under oath and then seek to add or change or deal

1 in any way with their testimony. Those questions were very
2 open-ended questions that asked for her responses, and she
3 gave them. If they're inconsistent, she can't come up now
4 and try to close the loop of consistency by some additional
5 testimony, and I am not thinking about allowing that to be
6 done.

7 MR. HARPOOTLIAN: With all due respect, Your Honor, we
8 believe and said at the time the way you questioned her put
9 her in the position of saying yes, that was my verdict
10 then. We think -- and we couldn't examine her. And, Your
11 Honor, to, to say now that this affidavit doesn't
12 accurately depict her position is to deny fact, the truth.

13 THE COURT: You've already said that once. I note
14 your position on that matter, but I decline to adopt it.
15 All right.

16 MR. HARPOOTLIAN: We'd, we'd, we'd make this exhibit
17 as a proffer for our case. This affidavit, we proffer it
18 for our case. We have the burden.

19 THE COURT: I'll give some thought to it. I'm not
20 ready to deal with that right now. I looked at it just in
21 the moment right before I put it on the record. I'll do
22 some research about that, and we're going to close that
23 loop before the end of the day.

24 MR. HARPOOTLIAN: Your Honor, and again I indicate we
25 have two more days. We don't have to wrap everything up

1 today. Thank you.

2 THE COURT: Yes, sir.

3 Mr. Waters.

4 MR. WATERS: Thank you, Your Honor. The State calls
5 Rebecca Hill.

6 THE COURT: Get Ms. Hill and bring her to the
7 courtroom.

8 (A PAUSE.)

9 REBECCA HILL, BEING DULY SWORN,
10 TESTIFIES AS FOLLOWS:

11 DIRECT EXAMINATION BY MR. WATERS:

12 Q. Good afternoon, Ms. Hill. How are you?

13 A. I'm fine.

14 Q. Want to get started. If you would, if you could state
15 your full name for the record and spell it for the court
16 reporter.

17 A. My name is Becky Hill, last name Hill, H-i-l-l.

18 Q. And if you would, just give us -- you're currently the
19 clerk of court for Colleton County. Is that correct?

20 A. That's correct.

21 Q. And just very quickly, if you would, what year were
22 you elected as the clerk of court?

23 A. At the end of 2020.

24 Q. At the end of 2020, and prior to that, did you have
25 any involvement or experience with the state judicial

1 system?

2 A. I did.

3 Q. And could you tell the Court what that was, please?

4 A. I was a South Carolina official court reporter for
5 about fourteen years.

6 Q. And were you -- and being an official court reporter,
7 you would serve in the courtroom which -- as Ms. Harris is
8 here today, or what ---

9 A. That's correct.

10 Q. Were you -- and was that primarily in the Fourteenth
11 Circuit?

12 A. It was primarily in the Fourteenth Circuit; however, I
13 did travel throughout the state.

14 Q. Did you have any other experience in your --
15 professional experience prior to becoming a court reporter
16 or a clerk of court?

17 A. I was a court reporter freelance for two years before
18 that.

19 Q. Okay, and any other professional pursuits you've had
20 over the course of your career?

21 A. I, I was able to be a middle school teacher, and I've
22 worked for the Board of Disabilities a few years as well.

23 Q. Let me go ahead and just kind of get straight to it.
24 In your capacity as clerk of court and in your previous
25 experience being a court reporter, were you familiar with

1 the rules that apply to court staff as it -- as it comes to
2 interactions with jurors during the course of a criminal
3 trial, or civil trial for that matter?

4 A. Yes.

5 Q. All right, and could you tell the Court generally what
6 those rules are as far as, as what contact is permissible
7 and what contact is not permissible, just very quickly?

8 A. The judge gives the, the law and gives the
9 instructions for a jury, and the attorneys will state their
10 opening argue -- their opening statements, their closing
11 arguments, and basically the clerk of court and anyone
12 else, court reporter, we're, we're there to -- my
13 understanding would be to make sure that everyone is taken
14 care of. Do you need some Kleenex, do you need some water,
15 different things like that just to make sure that they're
16 taken care of.

17 Q. Is it -- is it common for clerks of court to have
18 interaction with jurors during the course of a trial to see
19 to those various logistical needs that you -- that you just
20 described?

21 A. Yes.

22 Q. And did that happen in the *Murdaugh* case?

23 A. It did.

24 Q. And can you give us an example of some of the
25 logistical things that you or -- things that you would see

1 to to deal with any needs that the jurors may have? I
2 mean, did you provide them food, coffee, make sure they
3 were comfortable, things like that?

4 A. Yes, all of that.

5 Q. Provide blankets for them if they were cold?

6 A. Our courtroom was very cold in Colleton County, yes.

7 Q. Did you provide them with aspirin and Tylenol if they
8 needed it? Make sure coffee and snacks were available?

9 A. Yes.

10 Q. Did you take lunch orders for them so that they were
11 fed each day?

12 A. Yes.

13 Q. At any time, did you interact with any juror in an
14 attempt to influence their view of the facts in the *State*
15 *v. Murdaugh* case?

16 A. No.

17 Q. I want to ask you some specifics about that and some
18 allegations that have been raised. At any time, did you
19 tell the jury not to be fooled by evidence presented by Mr.
20 Murdaugh's attorneys?

21 A. I did not.

22 Q. At any time, did you instruct the jury to watch him
23 closely and look at his actions?

24 A. I did not.

25 Q. At any time, did you instruct the jury or tell the

1 jury to look at his movements?

2 A. No.

3 Q. At any time as the jury moved to deliberate, did you
4 tell the jury this shouldn't take long?

5 A. No.

6 Q. At any time, did you tell the jury that the defense
7 case -- watch out for the defense case? They're going to
8 try to throw you off or anything along those lines that was
9 meant to influence the jurors against Mr. Murdaugh?

10 A. No.

11 Q. Let me ask you if you ever made any comment to the
12 jurors about the fact that the defendant was going to
13 testify. Did you have -- did you have conversation in the
14 presence of the jurors prior to the defendant testifying
15 about the fact that he was about to testify?

16 A. It wasn't directly related to the jurors. I was
17 talking to Mr. Bill, who was our bailiff foreman -- our,
18 our, our bailiff over the jury, and I was talking to him
19 about that.

20 Q. All right, and what did you say?

21 A. I told him what I had just come downstairs telling my
22 security and bailiff's office that Judge Newman had allowed
23 more testimony in regarding the financials and that also
24 the defendant had decided that he may testify.

25 Q. And where were the jurors at the point that that

1 conversation occurred?

2 A. There were a few jurors standing in line, and there
3 were some in the bathroom, I'm sure, because they said they
4 were waiting on jurors to get out of the bathroom, and
5 there were some in the jury room just milling around from
6 what I could see looking down the hallway.

7 Q. And, and again, what were -- what were the -- what
8 were the words that you said during that conversation?
9 What were the effect of them?

10 A. To Mr. Bill.

11 Q. What did you say?

12 A. I told him that the -- that Judge Newman had -- was
13 allowing more of the financial evidence in, which would
14 prolong the, the testimony in the trial a little bit, and
15 also that the defendant had decided that he was going to
16 testify.

17 Q. Did you say anything about this being an important
18 day? Pay attention, we'll get coffee for you, things like
19 that?

20 A. I, I usually give a little talk to the jurors. It's,
21 it's sometimes hard sitting a long time, but my usual --
22 and I do remember saying pay attention. It's a big day
23 today. Whatever you need, let Mr. Bill know or one of the
24 other bailiffs, and they'll be glad to get it for you.

25 Q. Did your comments or were your comments in any way

1 phrased in favor of one side or against another side, or
2 were they more of a neutral comment about paying attention?

3 A. No. It was not for one side or the other.

4 Q. Were you present when the jury went to the Moselle
5 property to, to conduct the jury view?

6 A. I was.

7 Q. And was Judge Newman there as well?

8 A. He was.

9 Q. During the time that you were on the property,
10 traveling there, traveling back, did you have any
11 conversation with the jurors where you made any comment
12 about the substance of any testimony or any comment about
13 the merits or the strength of the case?

14 A. No. No.

15 Q. Did you have a quick comment to the forelady about how
16 the property was beautiful and, and there were tree -- tea
17 olive trees there that, that bloom and smell good or words
18 to that effect?

19 A. I did.

20 Q. And was there any other conversation related that you
21 had that you -- where you made any comment about the, the
22 case or the merits or anything like that?

23 A. Oh, no. No.

24 Q. During the course of this trial, did you have a
25 bailiff employee whose primary job it was to see to the

1 jury and, and their security and to keep them separate from
2 everyone else that was involved in this trial?

3 A. I did.

4 Q. And who was that?

5 A. Mr. Bill Polk.

6 Q. All right, and he was ultimately the jury coordinator
7 in this particular case?

8 A. That's correct.

9 Q. During the course of the deliberations, once the jury
10 went back there, did you have any contact with the jurors
11 or have any substantive discussion with them?

12 A. Not at all.

13 Q. Did you have any discussion with them about logistics
14 about staying in a hotel or anything like that?

15 A. I did not.

16 Q. Did you have any interaction with the jurors or any --
17 anything to do with them having smoke breaks or anything
18 like that?

19 A. I did not.

20 Q. During the course of the trial, did you have any
21 discussion or interaction with the jurors about them giving
22 any interviews to the media or, or making themselves
23 available to the media? I'm asking during the course of
24 the trial.

25 A. No, not during the course of the trial.

1 Q. After the verdicts had been reached and the case was
2 in sentencing, did you have any conversation with any
3 jurors at that time after they had already entered their
4 verdict and been individually polled?

5 A. Yes, after the sentencing.

6 Q. Tell the Court what that interaction was at that time.

7 A. There were several outlets, news outlets that wanted
8 to interview the jury as a whole and really wanted to get
9 them up to North -- to New York, and so I was trying to get
10 a hold of all the jurors to talk about that. That was
11 something we had not prepared for.

12 Q. Did you at all pressure the jurors to speak, or did
13 you just tell them that that was their option to speak or
14 not, and here's the contact information?

15 A. The -- I did not pressure the jury to speak.

16 Q. Did you advise them that it was their decision and
17 their decision alone whether or not they wished to speak to
18 the media?

19 A. It was totally their decision.

20 Q. And did you advise them of that?

21 A. Yes. Yes.

22 Q. I'm going to ask, ask it again, but I just want to be
23 sure. At any time, did you make any comment to any juror
24 or in the presence of any juror in which you at all tried
25 to influence them in favor of one side or against another?

1 A. I did not.

2 Q. Did you understand, being a longtime court employee
3 and clerk of court, that that is outside the boundaries of
4 what is appropriate interaction with the jurors during the
5 course of a trial?

6 A. Absolutely.

7 Q. And did at any time you violate that rule that you
8 understood?

9 A. I did not.

10 MR. WATERS: Court's indulgence a moment.

11 (A PAUSE.)

12 MR. WATERS: Nothing further at this time, Your Honor.

13 MR. HARPOOTLIAN: Please court, Your Honor?

14 THE COURT: Mr. Harpootlian on cross-examination.

15 CROSS-EXAMINATION BY MR. HARPOOTLIAN:

16 Q. Ms. Hill, we spent six weeks together, didn't we?

17 A. We did.

18 Q. And during those six weeks, you were helpful to me as
19 you could be, correct?

20 A. I was.

21 Q. Accommodated just about every request I made.

22 A. Yes, sir.

23 (AUDIO PROBLEMS INTERRUPT BRIEFLY.)

24 Q. Where were we? Oh, yeah, we're old friends.

25 THE COURT: Mr. Harpootlian, I want to be sure you can

1 be heard. That was the microphone that was supposed to --
2 you're fine where you are, absolutely fine.

3 MR. HARPOOTLIAN: Yes, ma'am. It was a stage
4 microphone. It was obscuring my ability to question the
5 witness.

6 THE COURT: Well, what I'm wondering is whether you
7 can be heard without a microphone. Do we need to try to
8 get a microphone ---

9 MR. HARPOOTLIAN: I can pull this ---

10 THE COURT: --- up on this podium?

11 MR. HARPOOTLIAN: --- closer to her if necessary.

12 THE COURT: Yeah, that would be good.

13 (A PAUSE.)

14 THE COURT: All right.

15 MR. HARPOOTLIAN: I don't know who's supposed to hear
16 this other than you, but I assume Becky Harris (sic), the
17 court reporter. I'm sorry. She's more important -- not --
18 as important as you.

19 THE COURT: Yes. I agree.

20 Q. Oh, yeah. We're old friends, right? We spent six
21 weeks together, a very pressure-filled situation, correct?

22 A. It was a long six weeks.

23 Q. It was a long six weeks, and during those six weeks,
24 you were helpful to me in a number of different ways.

25 Accommodating friends that I had that wanted to come watch

1 the trial, for instance, correct?

2 A. That's correct.

3 Q. You even allowed me to use the private restroom down
4 on the first floor so I didn't have to stand in line with
5 the rest of the people trying to take breaks, correct?

6 A. Correct.

7 Q. So, we have no animosity towards each other. You
8 didn't do something to me, and I didn't do something to you
9 during that trial, right?

10 A. Absolutely.

11 Q. Okay. Now given that, I'm going to ask you some
12 questions today that may indicate to you that I have some
13 antagonism toward you. Let me disabuse you of that. I'm
14 here doing a job representing my client.

15 Now, you've been around the court system for decades,
16 correct?

17 A. Yes, sir.

18 Q. So, you understand what we're doing here today.

19 A. Yes.

20 Q. Now, let me understand a couple of things. I think --
21 and I've read your book, one -- some editions of your book.
22 There are several. You got a bunch of emails in which you
23 have drafts that you forwarded to your co-author, correct?

24 MR. WATERS: Your Honor.

25 A. Correct.

1 MR. WATERS: Objection. I believe I would object to
2 relevance. I believe the actions of her co-author of the
3 book is beyond the scope of this inquiry here today.

4 THE COURT: Overruled.

5 You may proceed.

6 MR. HARPOOTLIAN: Thank you, Your Honor.

7 Q. And in those drafts, you say certain things about the
8 trial, about the process which you later did not include in
9 the final version. It's called editing. Is that correct?

10 A. I would agree with that.

11 Q. Now, let's talk about this book for just a second. It
12 -- when did you first decide you were going to write a
13 book?

14 A. I think a thought was there, a very fleeting thought
15 before the trial.

16 Q. Did you take any steps before the trial or at the
17 initiation of the trial to begin writing this book or
18 working with somebody on this book?

19 A. Oh, no, sir.

20 Q. When did you and your co-author get together?

21 A. It was several weeks after the trial.

22 Q. Did you talk to anybody about the fact you were going
23 to write a book before the trial?

24 A. There were several anchors and several journalists
25 that I did speak with about the possibility of writing a

1 book.

2 Q. Did -- so disorganized. I apologize. Did -- do you
3 know -- did you seek assistance in this trial from other
4 clerks of court?

5 A. Yes, sir, I did.

6 Q. And who were they?

7 A. Rhonda McElveen, who was the Barnwell County clerk of
8 court, and Renee Elvis from the Horry County clerk of
9 court.

10 Q. And did they -- were they with you the entire six
11 weeks?

12 A. No.

13 Q. I mean, how much -- how long were they there or how
14 often were they there?

15 A. Rhonda McElveen was there as often as she could be,
16 probably several times a week; Renee Elvis helped me during
17 the jury selection.

18 MR. HARPOOTLIAN: Beg the court's indulgence.

19 (A PAUSE.)

20 Q. And did she begin -- that is, Ms. McElveen -- did she
21 begin working with you prior to jury selection?

22 A. Can you repeat that question?

23 Q. Would she -- we began jury selection, I think, on
24 January 23, correct?

25 A. Correct.

1 Q. Was she working with you or consulting with you prior
2 to the 23rd?

3 A. No, sir.

4 Q. You have any conversations with her about the trial?

5 A. Not until she got to the trial or what -- I can't
6 remember the exact day she came.

7 Q. Now, is she a friend of yours?

8 A. She was a friend, yes.

9 Q. Was?

10 A. Well, she is a friend.

11 Q. Okay.

12 A. Yes.

13 Q. And she's done nothing to make you any less a friend?

14 A. No, sir.

15 Q. Now, did you tell her about the time of the trial that
16 you were going to write a book, that you had thought about
17 and were going to write a book?

18 A. I can't remember exactly. I, I think we did have a
19 conversation about a book possibly in the future.

20 Q. And did you tell her you were going to write a book
21 because you thought it would make a lot of money?

22 A. Oh, no, sir.

23 Q. You never said that?

24 A. No, sir.

25 Q. And did you tell her that you were going to write a

1 book to make a bunch of money so you could buy a lake lot
2 and build a house on it?

3 A. No, sir.

4 Q. Okay. Now, did you ever tell her that you had given a
5 juror a ride home, that you had accompanied Mr. Bill --
6 what's his last name?

7 A. Bill Polk.

8 Q. Right. That, that you and he took a juror home one
9 night? Did you tell her that? Did you take a juror home
10 one night?

11 A. I didn't take a juror home one night.

12 Q. Did ---

13 A. No, sir.

14 Q. --- Mr. Polk, Mr. Polk and you take a juror home one
15 night?

16 A. No, sir, we didn't.

17 Q. Okay. You never gave a juror a ride in a car with Mr.
18 Polk or without?

19 A. No, sir.

20 Q. Okay. Now also during the trial, your, your daughter
21 ended up on the venire. Is that right?

22 A. She did.

23 Q. And she was coming up and you talked to Mr. Waters
24 about putting her on the jury if at all possible.

25 A. Not sure that we wanted her to be on the jury if at

1 all possible, but I, I think the question was would she
2 make a good juror, and I said she sure -- she sure would.

3 Q. No, I don't think we asked you. I think you told us
4 she would make a great juror, did you not?

5 A. I remember you asking.

6 Q. I was considering putting your daughter on the jury?

7 A. Yes, sir.

8 Q. Who does she work for?

9 A. She works for Compass South.

10 Q. Did she work for the sheriff's department at some
11 point?

12 A. No, sir.

13 Q. Did she work in law enforcement at all?

14 A. No, sir.

15 Q. Now, let me ask you this. How many jury rooms were
16 there?

17 A. We have two jury rooms in Colleton.

18 Q. In this trial, how many jury rooms did you have? How
19 many ---

20 A. Two.

21 Q. Okay. So, the entire jury wasn't together at any one
22 time. They were separated into two rooms?

23 A. Yes.

24 Q. Okay, and did the -- when they're separated into two
25 jury rooms like that, are they next door to each other?

1 Are they down the hall from each other?

2 A. They are next door to each other.

3 Q. Okay. So -- but if you closed the door to one, could
4 they hear what's going on in the other one?

5 A. Some women probably have very good hearing, and men,
6 too, but I would say probably not.

7 Q. And there restrooms in both of the jury rooms?

8 A. There are.

9 Q. Were -- I mean, are there two restrooms or just one?

10 A. There's one restroom in each jury room.

11 Q. Were either one of those restrooms designated men and
12 women, or did everybody use the same one?

13 A. They were unisex.

14 Q. They were unisex. Okay. Now, prior to your testimony
15 here today, had you met with the attorney general's office
16 and SLED?

17 A. I have.

18 Q. On how many occasions?

19 A. I want to say twice.

20 Q. Okay, and you remember when the first time was?

21 A. I think the first time was in September.

22 Q. Okay, and the second time was last week?

23 A. Yes, sir.

24 Q. And that was in Walterboro?

25 A. Yes. That's right.

1 Q. And y'all spent about four, four and a half hours
2 together?

3 A. I want to say maybe two hours together.

4 Q. And in those two hours, you went over your testimony
5 here today?

6 A. They asked me questions.

7 Q. Did they ever correct your answers, suggest you answer
8 differently?

9 A. Oh, no.

10 Q. So, you just -- you just went through what you went
11 through in twenty minutes here, it took two hours to go
12 through when you were with them?

13 A. There were times when I would step out of the room and
14 come back in, but I would say we were there for about two
15 hours.

16 Q. Now, you have described in your book your role as
17 Switzerland. Is that correct?

18 A. Correct.

19 Q. Okay, and that is you should not be in any way
20 opinionated about what's going on in the trial. Is that
21 correct?

22 A. That's true.

23 Q. Yet in your book, you indicated a number of different
24 points during the trial you had concluded he was guilty.
25 Is that correct?

1 A. I think ---

2 MR. WATERS: Your Honor, I object at this point. I
3 don't know if her conclusions in the book are in any way
4 relevant to what occurred during the trial and whether or
5 not there was any communications with the jurors, which is
6 the sole issue that we're here for today, which is whether
7 or not Ms. Hill had any extraneous influence on the jurors.
8 And so I think this is going a little far afield. We
9 object to relevance, Your Honor.

10 THE COURT: Overruled.

11 You may continue.

12 Q. Let me give you an example. You indicate riding back
13 from Moselle that you and three other people were in the
14 car, and you all decided adamantly, I think was the word
15 you used, that he was guilty, that he had killed his wife
16 and son. Is that what you put in the book?

17 A. I can't remember if I put that in the book, but if you
18 say I did, then I would ---

19 Q. Did that happen?

20 A. --- agree with you. We did have a conversation about
21 what each of us thought.

22 Q. And y'all four agreed that he was guilty, correct?

23 A. And none of us were jurors.

24 Q. I know. Trust me. I know that, but you had an
25 abiding conviction, at least by the time of the Moselle

1 visit, that he was guilty and the other people in the car
2 with you were bailiffs, were they not?

3 A. No.

4 Q. Who were they?

5 A. Some were not bailiffs. One was a court reporter.
6 One was our security officer, head of security, and another
7 was a deputy sheriff.

8 Q. Okay, but the four of y'all rode out there and based
9 on what -- I mean, I can -- you want me to read to you how
10 chilled you were and how you felt this -- that poor Paul
11 and, and Maggie had been executed by him on that scene,
12 that visiting the scene convinced you that he was a
13 horrible, horrible murderer? You want me to read that to
14 you, or you will concede that's what you wrote?

15 A. I will concede that's what I wrote, but if I may, I
16 will -- I would say that that -- a lot of that is poetic
17 license in writing a book and in making it sound like that.

18 Q. Okay. So, some of it's poetic license and some of it
19 you just stole. You, you, you purloined it from that BBC
20 writer, right?

21 MR. WATERS: Your Honor, again I object to not only
22 the relevance but the scope of cross. I would object also
23 under Rule 608. I don't believe that that is appropriate
24 cross-examination.

25 THE COURT: Overruled.

1 You may continue, Mr. Harpootlian.

2 Q. Did you steal part of the book?

3 A. I did plagiarize, Mr. Harpootlian.

4 Q. Okay. That's stealing, isn't it?

5 A. It is.

6 Q. Okay.

7 A. And for that I'm very sorry, and I have apologized.

8 Q. Okay, and that makes it okay?

9 A. What I did, I did, and I apologized for that.

10 Q. And part of the book is, you say, literary license,
11 exaggeration?

12 A. I wouldn't call it exaggeration.

13 Q. Now, let me ask you this. As Switzerland, and this is
14 -- and you say this is happening while you're supposed to
15 be Switzerland. You decided the defendant was guilty, and
16 if Ms. McElveen says it's going to make you more money if
17 you -- if he's found guilty, don't you think it's
18 reasonable to assume that you may have crossed the line
19 from time to time?

20 MR. WATERS: Your Honor, I object to the form of the
21 question. Assuming facts not in evidence.

22 THE COURT: Overruled.

23 A. Can you repeat that question one more time?

24 Q. I'm not going to repeat it. Let me just move on to
25 something else.

1 Let, let me ask you. You'd had interactions with some
2 jurors, and I believe in a conference in the judge's
3 chambers you indicated that you had seen a post on -- is it
4 Walterboro Word of Mouth?

5 MR. WATERS: Your Honor, again I would object. I
6 think he's delving now into the Facebook injury. I
7 believe, again, that that's irrelevant to the inquiry
8 before Your Honor.

9 THE COURT: I will allow limited -- he's, as I
10 understand it, trying to impeach her testimony and explore
11 her credibility. And I think I've already told Mr.
12 Harpootlian that I don't want a whole trial about the
13 business of Facebook and the egg juror, but I will allow
14 limited examination on this point.

15 You may proceed, Mr. Harpootlian.

16 Q. Am I over -- oversimplifying that? You -- I mean,
17 it's in your book. You saw something on Walterboro Word of
18 Mouth, which it appeared to you to be from the ex-husband
19 of one of your jurors. Is that correct? Am I
20 oversimplifying that?

21 A. I remember reading one night something on Walterboro
22 Word of Mouth, and when I was in the courtroom on a Monday
23 morning listening to the judge and the attorneys talking
24 about a matter, it sounded like it was relevant to each
25 other.

1 Q. And you became aware somehow that this juror had a
2 restraining order out for her ex-husband?

3 A. She told me that herself.

4 Q. Okay, and tell me how it came for her to tell you
5 about that. Where did she tell you?

6 A. She was very talkative, and when I was instructed by
7 Judge Newman to go and get her from out of the jury room
8 with a, a deputy following me, she was talking to me all
9 the way back to the judge's chambers, and she mentioned
10 that there were restraining orders out when they had
11 divorced.

12 Q. So, how did the judge -- who brought it to the judge's
13 attention about this Walterboro Word of Mouth thing?

14 A. I let the judge know, thinking that it could be
15 related.

16 Q. Okay, and you let the judge know what?

17 A. That I had read something on Walterboro Word of Mouth.

18 Q. Okay, and that you knew it was tied to that juror?

19 A. I didn't know that it was. I wasn't ---

20 Q. Who ---

21 A. --- sure at all.

22 Q. Who did you think it was tied to?

23 A. From what y'all were talking about at the bench, I
24 felt like I needed to let, let him know just in case it was
25 related. There was something about a ex-husband and a

1 ex-wife and somebody being on the jury.

2 Q. You didn't tell the judge that you had found what we
3 call the apology post? You didn't tell the judge that?

4 A. I didn't call it that, no.

5 Q. You don't remember producing it, saying that, that --
6 producing it to the judge, saying this is a post in which
7 the guy that posted it on Friday night says the devil got
8 in him and drinking and he apologized for what he posted?
9 You didn't produce that?

10 A. My staff did, one of my staff.

11 Q. But you gave that to the judge and gave it to us, did
12 you not?

13 A. Yes, we did.

14 Q. As if it were from that juror's ex-husband, correct?

15 A. Correct.

16 Q. And you know it wasn't.

17 A. I don't know that, Mr. Harpootlian, no.

18 Q. So -- and this -- you did not take that juror out and
19 talk to her before you took her to the judge? Is that your
20 ---

21 A. I never, never talked to that juror about stuff like
22 that.

23 Q. Okay. Did you ever talk to the forelady of the jury
24 separate from the jury?

25 A. I did.

1 Q. Okay, and tell us. Where did that occur?

2 A. When I would go into the jury room and I would speak
3 with the forelady, we would be in, like, the hallway in the
4 -- the two jury rooms were side-by-side, and the opening to
5 the jury went out into the hallway, and we would be
6 surrounded by the jurors at all times. Mr. Bill would be
7 very, very nearby or other bailiff as well when we would
8 speak.

9 Q. And what did you speak to her about?

10 A. There were several instances. One was there was a
11 juror who needed some feminine products. There was another
12 time when band-aids were needed. There were times when
13 Tylenol would be needed.

14 Q. Other than items that were needed by the jury, did you
15 ever discuss -- did she ever discuss with you some issues
16 jurors had emotionally or some issues with dissension in
17 the jury room?

18 A. She only told me that there were some loud jurors and
19 it made some of the other jurors a little upset, but other
20 than that, that's ---

21 Q. What did -- what did you tell her to do?

22 A. I told her if it got out of hand, to write a note to
23 the judge and that she could sign the note and get Mr. Bill
24 to give it to the judge, and the judge would handle that
25 for her.

1 Q. Now, you did publish a book after, after this trial,
2 correct?

3 A. We did.

4 Q. And you went to New York and took some of the jurors
5 to *The Today Show*?

6 A. The day -- *The Today Show* did invite us, yes.

7 Q. Now, one of those jurors that went up there with you
8 the day of the verdict wore for the first time I can
9 remember, wore a suit to, to court. Do you remember that?

10 MR. WATERS: Your Honor, again, I would object to
11 discussion of the jurors wearing a suit or a post-trial
12 trip to, to *The Today Show*. I, I don't believe there's any
13 connection to the inquiry that's, that's ---

14 MR. HARPOOTLIAN: I, I'm ---

15 MR. WATERS: --- focused for Your Honor and that's
16 whether or not there was an extraneous influence during of
17 the course of the trial.

18 MR. HARPOOTLIAN: I'm going to connect it, Your Honor.

19 THE COURT: Overruled.

20 You may continue, Mr. Harpootlian.

21 Q. Did you text, email, or communicate on the morning
22 before final arguments were completed to people that they
23 -- this was on a Thursday -- that they probably, if they're
24 going to see the trial, should come on that Thursday
25 because it would be over the next day? The jury would not

1 be out very long. Did you ever communicate that? Email,
2 text, or verbally?

3 A. I do remember saying that, yes.

4 Q. And why did you think the jury would not be out very
5 long? Had you communicated with jurors?

6 A. I had not communicated with jurors about anything
7 related to this trial at all. I've been a court reporter
8 at least fourteen years. I was clerk of court for three,
9 and you just get to where you kind of see things happen as
10 they progress, and it's a guess. It's a gut feeling, and
11 that's, that's all that I meant by that.

12 Q. Well, why are you telling this young man who wanted
13 passes for the next day in an email, you know, won't be
14 happening tomorrow? That was your -- or did you say -- you
15 didn't say I don't think. You just said you'd better come
16 today if you're coming. You remember that?

17 A. I don't remember that but, you know, if, if he wanted
18 to come, I knew that the trial would be ending shortly as
19 far as testimony. So, if he wanted to come, he needed to
20 come.

21 Q. Why wouldn't the jury have been out a week on a
22 six-week trial?

23 A. They could have.

24 Q. But, but you're ---

25 A. They could have.

1 Q. You apparently were telling the press and others that
2 it would be a quick verdict, were you not?

3 A. That was a -- just a gut feeling that I had, and that
4 was my opinion.

5 Q. Your opinion. You were right. Jury was out three
6 hours on a six-week trial, correct?

7 A. That's true.

8 Q. How much money did you make off that book?

9 A. There was not a whole lot of money made off of the
10 book after paying different things and paying for some
11 expenses that went along with that, but I want to say
12 roughly around 100,000.

13 Q. Okay. That's not a lot of money?

14 A. No. Especially when you publish your own book.

15 Q. But that was 100,000 you made?

16 A. With my co-author.

17 Q. Okay. In, in what period of time? Six months?

18 A. I would say six months, yes.

19 Q. When was the book published?

20 A. August 1st.

21 Q. Okay. The trial was over -- that's six months after
22 the trial was over you published your book, correct?

23 A. Correct.

24 Q. And then I believe you recently stopped selling the
25 book because of the plagiarism you've admitted to, correct?

1 A. Correct.

2 Q. And so there's no more money?

3 A. Correct.

4 Q. Now, you also indicate in the book that the Murdaughs
5 had a reputation of criminality I think is kind of what you
6 put, did you not?

7 A. Well, Mr. Harpootlian, my grandfather and Old Man
8 Buster were very close.

9 Q. Well, were they criminals?

10 A. I wouldn't know.

11 Q. You wouldn't know, but you believed and you published
12 that the -- that the Murdaugh family had run that part of
13 the state and they'd participated in criminal conduct,
14 correct?

15 MR. WATERS: Your Honor, again I would object to the
16 general testimony about the alleged criminality of this
17 family. I -- I'm not sure how that has any bearing on the
18 focused inquiry before the Court.

19 THE COURT: He's asking about what she said in the
20 book. I'm going to allow it.

21 MR. HARPOOTLIAN: Yes, sir.

22 Q. Did you say that in the book that they, they were
23 criminals?

24 A. In the book, that was more of the, the literary ease
25 that we -- that we take, I think, to make a story a little

1 more interesting for the reader.

2 Q. Like calling people criminals? I, I guess what I'm
3 saying is this. Were they criminals?

4 MR. WATERS: Your Honor, again I would object to that
5 particular question.

6 THE COURT: Overruled.

7 Q. Were they criminals?

8 A. I wouldn't know that.

9 Q. Okay. So, you either made it up or you're lying about
10 it, about the reputation of people that can't defend
11 themselves. They're dead. You're going to call them
12 criminals. You did that in the book so you could sell the
13 book?

14 A. No, I didn't do that to sell books.

15 Q. What did you do it for? Made it more readable, you
16 said?

17 A. It's lit ---

18 Q. Which sells books.

19 A. Literary ease, yeah.

20 Q. What?

21 A. Literary.

22 Q. Literary what?

23 A. The, the literary ease that, that you can take with,
24 with writing a book.

25 Q. Literary ease you can take with writing a book and you

1 make stuff up. You can lie? You can lie about people?

2 A. With -- not with that. I, I -- you know, it's -- I
3 think the public perception was one that it was very
4 interesting during this time and ---

5 Q. So, you're feeding -- you're feeding the monster out
6 there that wants to believe bad things about the Murdaughs,
7 and you'll make stuff up to do it.

8 Let me give you another example. During -- I read
9 your book and I found it somewhat humorous. My co-counsel
10 did not. In describing Mr. -- myself and Mr. Griffin in
11 the book, you say that I neutered him. We've both been
12 very interested in what you mean by that. What did you
13 mean by it? I mean neutering Jim Griffin.

14 A. Mr. Harpootlian, it, it was a book.

15 Q. Did you make it up? I know it was a book.

16 A. Right.

17 Q. The Bible's a book.

18 A. Right.

19 Q. I mean, just because it's a book doesn't mean you can
20 lie in it.

21 A. It's, it's just a word ---

22 MR. WATERS: Your Honor, I ---

23 A. --- that was used.

24 MR. WATERS: --- object to the argumentative nature of
25 that exchange.

1 THE COURT: Don't argue with the witness.

2 But the witness, Ms. Hill, you are instructed to
3 answer these questions.

4 You may proceed, Mr. Harpootlian.

5 Q. So, let me get this straight. The book, and I'll see
6 if I can cut to the chase on this. I could read you
7 chapter after chapter, verse after verse which is not true,
8 not true based on my experience of being in a courtroom
9 and not true based on knowing some of the people you
10 describe.

11 MR. WATERS: I object.

12 Q. You say -- you say that is ---

13 THE COURT: Just a second, Mr. Harpootlian.

14 MR. WATERS: I object. Counsel is just testifying
15 now.

16 THE COURT: Ask a question, Mr. Harpootlian, please.

17 Q. You have conceded there are things in the book that
18 you don't know to be true, correct?

19 A. Correct.

20 Q. Okay. You would concede, then, that you lied in the
21 book.

22 A. It's only because I wasn't there at the time. I can't
23 -- I can't interview my dead grandfather. I can't
24 interview Mr. Buster. There's just things that we can't
25 interview them on. We can go by what was written in a

1 newspaper and get facts from that.

2 Q. And, and take the inference that one of the Murdaughs
3 is a pedophile. You could have printed that, and they're
4 not here to contradict it. You could have printed anything
5 you wanted and made it up to sell books. That's what this,
6 this whole scheme was about, selling books. As you told
7 Rhonda McElveen, if he -- if, if -- him being found guilty
8 would sell more books.

9 MR. WATERS: Your Honor.

10 Q. Isn't that true?

11 MR. WATERS: I'd object to the argumentative nature of
12 the question, the compound question, and assuming facts not
13 in evidence.

14 THE COURT: It is a compound question. If what you're
15 asking is what she told Ms. McElveen, go on and ask that,
16 but don't precede it with ---

17 MR. HARPOOTLIAN: Yes, Your Honor.

18 THE COURT: --- testimony.

19 MR. HARPOOTLIAN: Beg the court's indulgence for just
20 a moment.

21 (A PAUSE.)

22 Q. You write in your book about that juror that -- whose
23 ex-husband had posted something we now know probably wasn't
24 her ex-husband. Did she have any other ex-husbands that
25 you found out about?

1 A. I have no idea.

2 Q. Well, you wrote:

3 We learned later the ex-spouses hadn't seen each
4 other in fourteen years, and she had three
5 restraining orders against him.

6 Did, did she have three restraining orders against
7 him?

8 A. I don't know. That's what she said.

9 Q. Okay. Let me go over a couple of things. Did you
10 tell jurors at the end of the trial after Presidents' Day
11 break -- Presidents' Day break would have been on Monday,
12 correct?

13 A. Correct.

14 Q. But before Mr. Murdaugh testified, did you tell the
15 jury not to be fooled by the evidence presented by Mr.
16 Murdaugh's lawyers?

17 A. Mr. Harpootlian, I never talked to jurors about any of
18 the evidence ---

19 Q. Okay, the answer would be yes or no.

20 A. --- in this case.

21 Q. And then you can explain. Did you say that?

22 A. No.

23 Q. Okay. Did you all -- did you ever instruct the jury
24 to watch him closely? I mean before he testified, looking
25 at his actions, looking at his movements. Did you ever

1 tell the jury to do that?

2 A. No.

3 Q. Did you ever tell the jury to pay attention to Mr.
4 Murdaugh's testimony?

5 A. To pay attention. Not specifically to his testimony.
6 I did tell the jury to pay attention.

7 Q. To what?

8 A. Just generally in the hallway when I was speaking.

9 Q. Not to him?

10 A. No.

11 Q. Just to any witness?

12 A. Right.

13 Q. Okay. Did you -- did you ever warn the jurors the
14 defense is about to do their side? This is right before --
15 right at the beginning of the defense case:

16 They're going to say things that will try to
17 confuse you. Don't let them confuse you or
18 convince you or throw you off.

19 Did you ever tell the jury that?

20 A. No, sir.

21 Q. Okay. Did you ever tell the jury to get emotional: We
22 want to see your face because that is what they want to
23 see. Did you ever tell them that?

24 A. No, sir.

25 Q. Did you ever tell the jury that Mr. Murdaugh was about

1 to testify?

2 A. I didn't tell the jurors that.

3 Q. Now, did you tell the jury that if they didn't reach a
4 verdict by 10 o'clock, they were going to have to spend the
5 night?

6 A. No, sir, I did not.

7 Q. Did you ever tell they were going to have to spend the
8 night at some point?

9 A. No, sir.

10 Q. Did you ever tell them that they couldn't smoke?

11 A. No, sir.

12 Q. Got any other books in the works?

13 A. No, sir.

14 Q. I mean, doesn't this make a good book?

15 MR. HARPOOTLIAN: Thank you.

16 MR. WATERS: Court's indulgence one moment.

17 THE COURT: Yes, sir.

18 (A PAUSE.)

19 MR. WATERS: Your Honor, there were a few matters that
20 came up on cross obviously that I objected to.

21 THE COURT: You won't waive your -- you may reserve
22 your rights to object to the entire line of testimony, but
23 you may offer cross-examination subject to the assertion of
24 your objection about the testimony.

25 MR. WATERS: Thank you, Your Honor.

1 REDIRECT EXAMINATION BY MR. WATERS:

2 Q. One of the things you were asked about is finding this
3 Facebook post, and you brought that to the Court's
4 attention after a different issue that had already arisen
5 related to a, a juror. Is that correct?

6 A. Correct.

7 Q. All right, and are you technically capable of
8 manufacturing a Facebook post? Is that anything that you
9 have any capability to do?

10 A. I'm not.

11 Q. All right, and did you ask your staff member to go see
12 if she could find this post?

13 A. I did.

14 Q. Did you tell her just generally what you recalled
15 reviewing?

16 A. Yes.

17 Q. And did she -- did she have any further instruction
18 than that?

19 A. No.

20 Q. Were you sitting behind her as she was doing this
21 particular search or anything like that, or did she
22 eventually report back to you?

23 A. She is very, very techie, and then she reported back
24 to me.

25 Q. All right. So, you weren't there when she was

1 searching, anything like that?

2 A. No.

3 Q. She was, like, I couldn't find that post, but I did
4 find this and handed you the Facebook post. Is ---

5 A. Correct.

6 Q. --- that correct?

7 A. Correct.

8 Q. And you provided that to Judge Newman and then
9 ultimately to the -- it was provided to the parties. Is
10 that ---

11 A. Right.

12 Q. --- correct?

13 A. Correct.

14 Q. You were asked about conversations that you had with
15 the forelady. Did those involve logistical issues and
16 things like that?

17 A. The con ---

18 Q. For the jury?

19 A. The conversations with the forelady was everything --
20 there was nothing in -- regarding the defendant in this
21 trial.

22 Q. All right. So, they were logistical issues, not
23 anything to do with the substance of the trial. Is ---

24 A. Absolutely.

25 Q. --- that correct?

1 A. Yes.

2 Q. You were asked about whether or not you had texted
3 some people this won't be long. Was that at all in any
4 way based on any conversation you had with a juror as, as
5 to their internal thinking or anything like that, or was
6 that ---

7 A. Oh, ab ---

8 Q. --- just your assessment being an experienced person
9 in the court?

10 A. Absolutely not.

11 Q. It was based on just your assessments?

12 A. Just my assessments, yes.

13 Q. Did you ever communicate with the jurors on how long
14 they would be, or did any juror ever tell you how long they
15 thought they would be?

16 A. I never talked to any jurors about anything like that.

17 Q. You were asked about your book, and I don't want to
18 get into too much detail about that, but you were asked
19 about some of the assertions that you made in the book, and
20 you were asked if these were lies. Were they lies or were
21 they ultimately things that were based on inferences from
22 newspapers and community ---

23 MR. HARPOOTLIAN: Objection.

24 Q. --- stories?

25 MR. HARPOOTLIAN: Leading.

1 THE COURT: You are leading. This is your witness,
2 Mr. Waters, so please ask a direct question.

3 MR. WATERS: Thank you.

4 Q. Was your -- some of the statements that you were asked
5 about in your book, were they lies or were they based on
6 your inferences from just general community knowledge and
7 things that you had researched?

8 MR. HARPOOTLIAN: Still leading, but I'm not going to
9 object.

10 THE COURT: All right, sir.

11 MR. HARPOOTLIAN: Thank you.

12 THE COURT: He's right about that, Mr. Waters. Just
13 ask a direct question.

14 Q. Did you lie in your book?

15 A. No, I did not.

16 Q. Thank you. You were asked about when you told the
17 jury to pay attention. When you -- asked that question,
18 did you also mention anything about we got coffee for you
19 or things like that?

20 A. I knew that Mr. Bill would take care of that, and the
21 jurors knew, too. Coffee, we had done some Dunkin Donut
22 runs. We had provided coffee, different other things to
23 help stay awake in the cold courtroom that we were -- found
24 ourselves in, and so I knew that anything they needed, Mr.
25 Bill would see that they got because that's what he did.

1 Q. At any time, did you have any conversation with any
2 jurors in which you tried to influence their decision?

3 A. I did not have a conversation with any juror about
4 anything related to this case.

5 MR. WATERS: Nothing further, Your Honor.

6 MR. HARPOOTLIAN: Nothing further, Your Honor.

7 THE COURT: All right.

8 EXAMINATION BY THE COURT:

9 Q. Ms. Hill, I want you to turn your attention to a
10 hearing that Judge Newman had about the alternate who was
11 dismissed, sometimes call the egg juror. Do you recall
12 that hearing?

13 A. Yes, ma'am.

14 Q. In the hearing, Judge Newman expressed his unhappiness
15 with you for questioning that juror before he questioned
16 her. Do you recall that?

17 A. I do remember seeing that.

18 Q. Well, then let's go back and talk about that juror.
19 You on examination in this courtroom, you said she's talked
20 about a lot of things to you, but you didn't ask her any
21 questions, but that's not completely accurate, is it?

22 A. Yes, ma'am, that is true.

23 Q. Well, you asked -- you asked her direct questions, and
24 that came out in the hearing that Judge Newman had. You
25 asked her questions before she was even examined by the

1 judge, did you not?

2 A. Your Honor, I, I did not ask her any questions.

3 Q. The juror was examined by the judge in a hearing. Do
4 you recall that hearing, the second hearing on this matter?

5 A. I do recall that hearing, yes.

6 Q. And the Court asked you -- the Court asked this juror
7 about postings on Facebook, did he not?

8 A. Correct.

9 Q. And the juror said she:

10 Gave Ms. Becky my full access to my Facebook, and
11 I've put positive posts on it. I've done that
12 for the past three years.

13 Do you recall her testifying in that regard?

14 A. I do remember reading that.

15 Q. And the judge said: Has anyone posted anything on
16 Facebook about you? And the juror answered: I was not
17 aware of it until Ms. Becky told me today. Do you recall
18 that?

19 A. I do remember her saying that.

20 Q. And do you recall the judge saying what did she tell
21 me? And the juror said: She asked me if I had an
22 ex-husband and I said yeah. Did you ask her that?

23 A. I remember her saying this, Your Honor, but I did not
24 ask her any of these questions.

25 Q. And she further says:

1 She asked me if I had talked to him about the
2 case or being on jury duty, and I said no. I had
3 questioned her about why she was asking me that.

4 I haven't seen my husband since 2014.

5 Do you recall her testifying to that?

6 A. I do remember that, yes.

7 Q. And with that having jarred your memory, do you recall
8 asking her about her husband and his post?

9 A. Your Honor, I don't remember saying anything about
10 that.

11 Q. Well, what was the post that you read in the
12 Walterboro Word of Mouth? What, what was the nature -- you
13 read that, did you not?

14 A. I did.

15 Q. What did it say?

16 A. My memory is a little fuzzy with that, but it was
17 about a -- an ex-husband who found out that his ex-wife was
18 on a jury, and he didn't think that she would be a good
19 juror, and it just sounded very similar to what I had heard
20 the judge and the attorneys speaking about.

21 Q. So, you then went to that juror and questioned her
22 about that, did you not?

23 A. I did not, Your Honor.

24 Q. Well, she says in this testimony that she didn't know
25 about the Facebook until Ms. Becky told me when she -- was

1 that incorrect?

2 A. I'm not saying ---

3 Q. Some kind of conversation went between the two of her
4 -- for her to know about that post, correct?

5 A. That's true, and I'm thinking that it could have been
6 someone. It wasn't me. I just know it's not me that she
7 talked to about that.

8 Q. Well, when the judge, the judge was questioning the
9 juror about this, she also said that she had three
10 restraining orders against him, and she also said:

11 I was very upset after she told me that. I have,
12 like I said, I have three restraining orders
13 against him, and I wouldn't have anything to do
14 with him if I didn't have a child with him, but I
15 haven't seen him since 2014.

16 She didn't -- y'all didn't discuss that, the
17 restraining orders?

18 A. On the way from the jury -- from the jury room to the
19 back chambers where the judge was, she was very scared.
20 She was talking about the, the three restraining orders
21 that she had out on her husband at the time they were
22 divorcing, and she was scared that he would be trying to
23 get back in contact with her again.

24 Q. Well, how did you know that? Did she tell you that?

25 A. She was talking about that on the way to the jury room

1 -- to the chambers with the judge.

2 Q. And in this hearing now that I'm looking at that the
3 Court was conducting, she said -- they're asking about this
4 Facebook post, and she said:

5 Ms. Becky said she went -- had went to look for
6 the post again and that it had been deleted. I
7 don't know who she talked to or anything else,
8 but she said apparently.

9 Do you recall her saying that?

10 A. I do remember her saying that.

11 Q. And the Court then said: What did she tell you about
12 that? And the juror said: It was after you let us go on
13 the last break; I was very upset.

14 This is what you're talking about:

15 And she came down and talked to me and said that
16 apparently -- I don't know who talked to him, but
17 he, he said he was drunk and he removed the post.

18 Do you recall that?

19 A. Well, she didn't tell me that, and I didn't talk with
20 her about that.

21 Q. Well, you saw that post, the so-called apology post,
22 did you not?

23 A. Right. I did.

24 Q. And you assumed that was a post from her husband, did
25 you not?

1 A. Right.

2 Q. And then you talked to the juror about that, did you
3 not?

4 A. I did not talk with the juror about that.

5 Q. Well, who did you talk to about it? Did you bring it
6 to the judge's attention?

7 A. No. We didn't get a chance to talk to the judge about
8 that.

9 Q. The Court asked this juror: Has the clerk discussed
10 anything about the case with anyone on the jury? The juror
11 said: Not that I'm aware of. The judge said: Okay, she was
12 just discussing with ---

13 Juror: She pulled me aside when we went
14 downstairs after the last break. I want to say
15 it was after lunch, and we came back, and that's
16 when she first told me about it.

17 About this, what we know now was a -- not a post from
18 her husband.

19 A. Right.

20 Q. But you assumed it was a post at the time, and y'all
21 had a conversation about it, correct? Don't just nod.

22 Answer the question.

23 A. Yes, sir -- yes, ma'am. I believe that it was one of
24 my staff that she talked to, and -- but it was not me that
25 she talked to.

1 Q. And -- but the juror says:

2 And I want to say it was after lunch we came
3 back, and that's when she first told me about
4 it.

5 She's talking about you.

6 A. Correct.

7 Q. Then we went back into the court, and I never
8 even got to sit on the jury.

9 The judge says -- the judge then stops the questioning
10 and she exits the room. Mr. Griffin:

11 Your Honor, I think that satisfies it. She
12 hadn't talked to anybody, hadn't expressed an
13 opinion, hadn't made up an opinion. She's got an
14 ex-husband that she had three restraining orders
15 against him.

16 The Court said: Mr. Waters.

17 It's -- obviously we're all invested in this. My
18 main concern, I certainly would love to -- not
19 love to but want to hear, you know, what one of
20 these individuals said but, you know, she
21 answered the questions as she did.

22 Talking about the juror.

23 They then have a colloquy about this juror and whether
24 this was really her husband that put this post in that you
25 talked to her about and apparently talked to the Court

1 about at some point. Am I right?

2 A. That's right.

3 Q. And then at the end, the judge said that he was not
4 too happy with your having talked to the juror before you
5 talked to him. Do you recall the judge saying that?

6 A. Yes, ma'am, I do.

7 Q. And did you pop right up there and say what you're
8 saying now, that you never talked to her?

9 A. We never talked about it after that. I wasn't in the
10 room when he said that.

11 Q. The judge brought up another thing right after
12 sentencing that I want to explore with you briefly. One of
13 the big responsibilities of the clerk of court is to take
14 control of the exhibits that are presented in court. Isn't
15 that correct?

16 A. Yes, ma'am.

17 Q. And there were sealed exhibits presented in this case
18 that were photographs of the two decedents at Moselle when
19 the law enforcement authorities first investigated the
20 murders. Do you recall that?

21 A. Yes, ma'am.

22 Q. And those photographs were sealed by the judge, were
23 they not?

24 A. Correct.

25 Q. And when the testimony about them was completed, they

1 were under your control as the clerk of court, were they
2 not?

3 A. That's correct.

4 Q. How was it that those photographs came into public
5 view?

6 A. Are you talking about after the ---

7 Q. I'm talking about -- he alluded to it on sentencing
8 and said that he was frustrated about it and was going to
9 try to look into it. Those photographs that were sealed
10 court exhibits under your control found their way into the
11 public media, did they not?

12 A. I believe they did, and I think what happened, it was
13 someone from the gallery took a picture from the screen
14 that had some of the pictures on it, if I'm remembering
15 correctly.

16 Q. Did you ever allow anyone in the press to view these
17 sealed exhibits?

18 A. No, ma'am.

19 Q. Did you allow Netflix to ever examine the exhibits of
20 the trial?

21 A. No, ma'am.

22 Q. How did you handle exhibits because you did have press
23 have great access to the exhibits. And you say several
24 times in your book that you had to stay after to be sure
25 that you interacted with the press about these exhibits.

1 That's true, is it not?

2 A. That is true. We, we had Mr. Jay Bender. Then we had
3 the, the pool photographers, and someone from maybe *The*
4 *State*, I believe, or the *Post and Courier*, along with the
5 court reporters, someone from Court Administration, and
6 then someone from the clerk's office every night that would
7 go over the exhibits to make sure everything was correct
8 and in -- within our domain.

9 Q. Were any press people ever allowed to view the
10 exhibits, even the sealed exhibits, that you had on file?

11 A. No, ma'am. No, ma'am.

12 Q. What was the methodology for allowing them to examine
13 the exhibits? How did you handle that?

14 A. I wasn't there a whole lot with -- when we did this
15 every night, but it's my understanding that the people that
16 were involved with the exhibits, and especially the court
17 reporters -- and there was a certain timeframe that they
18 were allowed to take their pictures and everything was --
19 all the -- all of the pictures were looked at by the court
20 reporters that were there and the lady from Court
21 Administration, along with someone from my office and Mr.
22 Jay Bender to make sure that everything was done correctly.

23 Q. What I'm asking is how you handled having them, the
24 press, view these exhibits.

25 A. If I remember correctly, the press -- we had certain

1 designated photographers as in someone, I think, from *The*
2 *State* or the -- or the *Post and Courier*, and they were
3 responsible for putting it out to -- on a stream for the
4 rest of the media to access.

5 Q. And would they do that by photographing the exhibits
6 as they were in your possession after court was over that
7 day?

8 A. That is correct.

9 Q. And how did you handle the sealed exhibits in terms of
10 their availability when these press people are there
11 photographing the exhibits?

12 A. They stayed sealed.

13 Q. And so you think that the -- you're aware of the fact
14 that some of these on-the-scene photographs of the two
15 decedents found their way into the public press. You're
16 aware of that, are you not?

17 A. Yes, ma'am, I am, yes.

18 Q. And you contend that they photographed them in the
19 courtroom?

20 A. That is what I heard.

21 Q. All right. Finally, you have indicated about your
22 book that some things that you put in there were -- you
23 called it literary license, not literally true, correct?

24 A. Correct.

25 Q. Did you ever by any kind of email communication or in

1 any, way, shape, or form indicate or state that you wanted
2 a guilty verdict because it would increase the sales of
3 book -- of the book? Did you ever say that in an email or
4 verbally or in any other way?

5 A. No, ma'am, I did not. It didn't matter to me if it
6 was guilty, not guilty, or a mistrial.

7 Q. Well, in your book you suggest the guilty verdict was
8 what you wanted and you were fearful that, that a guilty
9 verdict would not be rendered. You say a lot about your
10 feeling about wanting a guilty verdict, do you not?

11 A. I do agree that that is said in the book, and, and
12 part of that is because I think it was a guilty verdict.

13 Q. Well, this is way -- you're describing a time way
14 before the verdict was rendered when you wrote about those
15 things in the book. Isn't that correct?

16 A. It is, yes.

17 Q. And you even have something where you said your eyes
18 met with jurors and others at Moselle and y'all have an
19 understanding, unspoken, that he was guilty. You said that
20 in the book, did you not?

21 A. I did say that in the book, and I would consider that
22 part of the literary -- the words that we just said, but
23 that, that -- there was nothing spoken with a juror at all
24 at Moselle or anywhere else at the courthouse or anywhere.
25 I think that was -- that's, that's part of that poetic

1 license that, that we write to make something more
2 apparent. But at no time did I read or try to read someone
3 else's eyes, and was just one of those gut feelings that,
4 that I wrote in the book.

5 Q. You wrote in the book speaking of a time before the
6 jury verdict was rendered:

7 I was conflicted about knowing the Murdaugh
8 family and about having so many people watching
9 and listening to me as I read the verdict. I was
10 mostly concerned about Alex being found innocent
11 when I knew in my heart he was guilty. I had
12 this fear that the goodwill the Murdaughs had
13 built up in the community would influence the
14 jury.

15 You wrote that, did you not?

16 A. Yes, ma'am.

17 Q. So, you had those feelings well before the verdict was
18 announced in this case. You had some definite opinions and
19 feelings about what the verdict should be, did you not?

20 A. I did have a certain way that I felt.

21 Q. And that wasn't ---

22 A. But I would never ---

23 Q. That's not any poetic license, what was said there.
24 That's how you felt, correct?

25 A. Correct.

1 Q. All right.

2 THE COURT: Those are my questions. Anything further
3 from the State, Mr. Waters?

4 MR. WATERS: Court's indulgence, Your Honor.

5 (A PAUSE.)

6 MR. WATERS: Very briefly, Your Honor.

7 THE COURT: Yes, sir.

8 FURTHER DIRECT EXAMINATION BY MR. WATERS:

9 Q. You were asked a number of questions about
10 interactions during the in-camera proceedings with the
11 juror who was excluded. Were you in the room during the
12 entirety of those interactions or just brought in here or
13 there as this occurred?

14 A. No. I was only brought in for my asking of my
15 questions from Judge Newman.

16 Q. Okay, and you were asked a little bit about sealed
17 exhibits and about Judge Newman's comments at sentencing at
18 the end of trial, and just to clarify. Those were not
19 pictures of any sealed exhibits. It was a picture that
20 someone had taken in the gallery that had actually been
21 disclosed, and that's what Judge Newman was talking about,
22 to your understanding?

23 A. That was my understanding, yes.

24 Q. And then after the trial, there was even a post-trial
25 hearing or some discussion about the fact that the -- some

1 body-cam videos had not been sealed, and Judge Newman fixed
2 that problem after the trial. Is that correct?

3 A. Correct.

4 MR. WATERS: Nothing further, Your Honor.

5 MR. HARPOOTLIAN: Just a couple of questions, Your
6 Honor.

7 THE COURT: Mr. Harpootlian.

8 FURTHER CROSS-EXAMINATION BY MR. HARPOOTLIAN:

9 Q. Let me understand this correctly. You would agree
10 that you did release all of the exhibits in this case,
11 sealed and unsealed, to the Texas film crew. Is that
12 correct?

13 A. No, sir.

14 Q. Hm?

15 A. No, sir, I did not release the, the sealed exhibits.

16 Q. What about the two to Netflix? Didn't you indicate to
17 the judge they'd been mistakenly released? You were
18 getting them back?

19 A. As an error before -- when we realized everything --
20 yes, those two did go, and Netflix had not even -- they
21 said they had not even looked at them.

22 Q. Did you get them back?

23 A. We did get them back, yes.

24 Q. Okay. What about the Japanese film crew? Did they
25 get exhibits, the sealed exhibits?

1 A. They did not get any sealed exhibits.

2 Q. What about NBC Universal?

3 A. No sealed exhibits.

4 Q. But you do concede that Netflix did get sealed
5 exhibits.

6 A. They did as an error. It wasn't listed ---

7 Q. Whose error?

8 A. Well, I would say the court reporter didn't mark it on
9 the -- on the listing.

10 Q. Well, why were you in such -- why, why were you so
11 accommodating to these national documentary folks? I mean,
12 is this good for the book? I mean, the more documentaries
13 out there about the Murdaugh thing, the better your book
14 sales are? I mean, it was -- there was money in this for
15 you, right? Again, it's about the money, right?

16 A. What's your question now? There's ---

17 Q. Isn't it financially beneficial to you and at the time
18 to get more of these photographs out, more publicity, more
19 Netflix, more HBO, more Japanese -- doesn't that sell for
20 you? Didn't you see a financial advantage?

21 A. Not at all.

22 Q. Okay.

23 MR. HARPOOTLIAN: Thank you. No further questions.

24 THE COURT: All right, Ms. Hill, you may step down.

25 MR. LEWIS: Your Honor.

1 THE COURT: Hang on for a moment.

2 Mr. Lewis.

3 MR. LEWIS: Is she excused from her subpoena? I just
4 want to make sure she's now excused from her subpoena.

5 THE COURT: I want her to step down. Yes, she's still
6 under subpoena, but I haven't heard what's going to be
7 said. Mr. Harpootlian still has some things he wants to
8 raise about other witnesses and so forth. So, what I would
9 prefer is that she remain with you, Mr. Lewis, until we see
10 what else is going to happen.

11 You may step down.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: All right, Mr. Harpootlian.

14 MR. HARPOOTLIAN: Your Honor, we've got literally
15 millions of pages of documents in this case. Ms. Miller
16 just uncovered an email relevant to what you asked. We
17 don't have it printed out, but what it is, is a email to
18 Rebecca Hill from Miho Takeuchi, Takeuchi something. Miho,
19 first name:

20 The Beaufort McDowell body cam should not have
21 gone to you. Please get rid of it. Do not use
22 it. The judge, Judge Newman, specifically
23 ordered that body cam not be used if it got out.
24 Apparently it's still on the video. I appreciate
25 your attention.

1 What about the -- he writes back:

2 What about the other body-cam video we can -- we
3 can see on many news documentaries? Can you
4 provide it? It seems the camera's on the other
5 police person.

6 I mean, here she's having emails between this Japanese
7 production company about body cams, telling them not --
8 telling them to get rid of it. I think that's important,
9 and I can have a copy of this printed out for you when we
10 get it to a printer, for the record.

11 THE COURT: That would be fine. Do you want to offer
12 it as an exhibit?

13 MR. HARPOOTLIAN: I do.

14 THE COURT: All right, Mr. Waters.

15 MR. WATERS: I have no objection. If I could ask the
16 date of that?

17 MR. HARPOOTLIAN: The date is July 17, 2023, July.

18 THE COURT: All right, that's one thing. What else?
19 I will admit it; I will allow it. That was -- that is
20 impeachment of her testimony to me that she did not send
21 any emails.

22 MR. HARPOOTLIAN: Yes, Your Honor.

23 THE COURT: Or release anything.

24 MR. HARPOOTLIAN: Yes, Your Honor.

25 THE COURT: In fact, she changed that testimony on

1 redirect when she said she did, so-called by accident,
2 release the thing.

3 MR. HARPOOTLIAN: That doesn't appear to be by
4 accident. So, we'd like that made part of the record.

5 Secondly, I have sitting outside the courtroom the
6 clerk of court for Barnwell County, Rhonda McElveen. She
7 specifically denied saying certain things to the clerk of
8 court.

9 THE COURT: She did.

10 MR. HARPOOTLIAN: Of Barnwell County and denied doing
11 certain things. I think you're going to find her testimony
12 extraordinarily instructive and educational, and it
13 shouldn't take -- I would be shocked if it took twenty
14 minutes.

15 THE COURT: Well, in light of the answers she gave to
16 my questions and some of yours in that regard, I'm going to
17 allow it.

18 Now, I want to know what else we're looking at here.

19 (A PAUSE.)

20 MR. HARPOOTLIAN: Your Honor, I want to hand up to you
21 an affidavit from a witness we would propose to provide in
22 addition to -- in addition to the clerk of court. This is
23 a alternate juror, not the egg lady. This was the
24 alternate juror who was dismissed when she was not needed
25 for deliberations and she is here, also ready to testify.

1 And I would expect her testimony to take about the same
2 time as one of those jurors this morning.

3 THE COURT: Sir?

4 MR. HARPOOTLIAN: I would expect her testimony would
5 take about as much time as one of those jurors this
6 morning.

7 THE COURT: This is your offer in refutation of the
8 testimony Ms. Hill has given today?

9 MR. HARPOOTLIAN: She denied saying anything ---

10 THE COURT: She denies saying anything, that's
11 correct.

12 MR. HARPOOTLIAN: Yes. Yes, Your Honor.

13 THE COURT: Now, is this -- is this juror, alternate
14 juror going to testify?

15 MR. HARPOOTLIAN: She's here, yes. Yes, Your Honor.
16 She's sitting...

17 THE COURT: Well, you say she's here. She's
18 available?

19 MR. HARPOOTLIAN: Yes, ma'am.

20 THE COURT: Mr. Waters.

21 MR. WATERS: Your Honor, a couple of things on this
22 particular alternate juror. We've just been handed this
23 particular affidavit. Your Honor, I believe that Your
24 Honor had correctly ruled that the focus, again, was on
25 those jurors. An inquiry has been made to those particular

1 jurors. I don't know why we would go into detail with an
2 alternate juror that ultimately did not sit in any
3 deliberations and cannot testify as to any effect on the
4 verdict, which is the ultimate inquiry before Your Honor.
5 And so we would -- we would object to this particular
6 testimony as far as it relates to the alternate juror.

7 THE COURT: Here's the one thing that gives me some
8 heartburn, and you can help me with this, please. I stand
9 by the rulings I have made that only jurors can be
10 questioned about the effect on their verdict, and that is
11 why I did not allow the testimony of the egg juror in that
12 regard.

13 He is now offering this testimony, and it's testimony
14 of certain things that were said to the jurors as a whole
15 rather than just to this particular juror. And I would, as
16 I say, I would ordinarily not allow this, but Ms. Hill
17 testified several times during the course of her just
18 concluded appearance that she never told any jurors
19 anything along the lines of what has been asked here,
20 particularly the comments about they're going to say things
21 that will try to confuse you or throw you off, things of
22 that nature. She was asked that, and she denied she ever
23 said anything like that. So, this is an attempt to
24 impeach, as I see it, and that's what's giving me a little
25 heartburn about just turning him down flat.

1 MR. WATERS: Well, a couple of things as to that, Your
2 Honor. First of all, I, I think we have some very specific
3 statements and a specific individual that's mentioned here.
4 And so if we're looking at Rule 613(b), which is
5 essentially where they're operating, I don't know that
6 there was an appropriate foundation laid as to the specific
7 time and to whom these specific statements were made. I
8 think that it needed to be cleaner with regards to that as
9 to, you know, mentioning this particular person and as much
10 as you can the time and place and the very specific
11 statements that were made.

12 I think Mr. Harpootlian -- again, we have these
13 general allegations and kind of went through those, but I
14 don't know what -- now that we were just handed this
15 affidavit that they were set forth as an appropriate
16 clarity that's required by 613(b). So, I think there's a
17 failure there.

18 THE COURT: Mr. Waters, look for a minute at
19 paragraphs 3, 4, 5, 6, 7. Those paragraphs all address
20 things that had been asked her, and they are pretty
21 specific as to time and place. And the content of this
22 testimony is an attempt to the impeach her, Ms. Hill's,
23 testimony. That's, that's why I, as I guess colloquially,
24 I said I'm having a little heartburn about excluding this
25 is because she was asked directly about these matters, and

1 this testimony would be in conflict with that, which would
2 be permitted to impeach someone.

3 MR. WATERS: Right, and, Your Honor, I certainly
4 understand the point. I guess I would have just two points
5 to that. Number one is that we've already talked about
6 this evidentiary hearing is, is within your discretion and
7 the manner, particularly when you're talking about jurors
8 and the manner to be conducting that. Now we're talking
9 about putting a juror on the stand and having attorney
10 examination.

11 I think under the case law, that's within your
12 discretion as to how that inquiry should go as opposed to
13 were we purely in a trial setting and, and applying the
14 evidentiary rules. But if we're applying the evidentiary
15 rules, again strictly apply. I think -- I don't know that
16 they have laid the foundation with enough clarity to offer
17 extrinsic evidence under 613(b), and that would be our
18 argument, that we just had generally discussions with of
19 these concepts but not place, time, and person to whom it
20 was made with the specificity that 613(b) requires. So,
21 that would be our evidentiary objection in the event that
22 Your Honor is, is addressing those. So, that would be our
23 position.

24 And I do also, I -- before we get started, I want to
25 go back and address the sealed exhibits issue whenever it's

1 appropriate.

2 THE COURT: Sure, sure, sure.

3 MR. WATERS: Now I'd be happy to do that.

4 THE COURT: Mr. Harpootlian.

5 MR. HARPOOTLIAN: Your Honor.

6 THE COURT: Slow. No. Slow for a minute. I'm
7 turning to Mr. Waters to try to get some clarity about why
8 he objects to this testimony. One is the 613 issue that
9 he's explored, and I understand that. He now wants to say
10 something about the sealed exhibits, so I want to hear from
11 him on that, and then you can reply to both of them.

12 MR. HARPOOTLIAN: I'm sorry, Your Honor.

13 THE COURT: That's all right.

14 MR. HARPOOTLIAN: I'm distracted by Mr. Barber.

15 THE COURT: I understand.

16 MR. WATERS: And, you know, finally, going back to the
17 juror issue, we would also raise 403 as well just because
18 of the nature of the inquiry we're here to assist.

19 Going back to the sealed exhibits, I just want to
20 clarify for Your Honor. Mr. Griffin and Mr. Harpootlian
21 were at this hearing. After the trial, there was a release
22 of -- and these were publicly filed exhibits -- of a number
23 of exhibits. What also got released at the time were two
24 body-cam exhibits which had images of the victims at the
25 scene. Those had inadvertently not been marked as sealed

1 exhibits, and ultimately then we had a hearing in front of
2 Judge Newman, and essentially those were clawed back. And
3 so I just want to be clear that when we're having testimony
4 about that particular thing as it relates to what Ms. Hill
5 was saying, that that was what was -- those were the sealed
6 exhibits that were released. And again at the time, they
7 had not been marked sealed, and that was sort of
8 retroactively fixed.

9 And then the other issue, of course, is, Your Honor,
10 is, is again that the issue that Judge Newman was talking
11 about after sentencing was a gallery photo. It was not a
12 -- what apparently would be a, you know, maybe a press
13 fellow -- photo of the exact exhibits.

14 And what we did at trial, and Mr. Harpootlian can
15 speak to this and Mr. Bender could as well, is at the end
16 of each day, first of all, sealed exhibits would have a
17 coversheet or folder that they would be in, and then they
18 would verify with the parties that these are the -- these
19 are the okay exhibits, these are the sealed exhibits, and
20 then at that point after court was concluded, the media
21 would then be allowed to review and/or photograph or get
22 copies of the unsealed exhibits. So, that's just how the
23 procedure was working.

24 THE COURT: That's very helpful to clarify this
25 because I now see this in perspective that there were --

1 that the materials that were photographs at the scene or
2 depictions at the scene of the two victims, what you're
3 telling me is that those were inadvertently released after
4 the trial by, I guess, by -- well, it would have to be by
5 the clerk of court. She's the one that had them. And they
6 were -- and they weren't properly marked.

7 MR. WATERS: That's correct.

8 THE COURT: And they were then clawed back.

9 MR. WATERS: Yeah. They were the two body-cam videos,
10 and so in those videos they weren't -- they weren't
11 physical images, but they were the body-cam videos, and
12 then in those videos you can see the victims at the scene.
13 Those two exhibits, to my recollection, were the only two
14 that should have been sealed but they, in fairness, were
15 not marked sealed, and that's how they got released.

16 THE COURT: And that's how they got out.

17 MR. WATERS: The second we realized there was a
18 problem, we took care of it and, and clawed those back.

19 THE COURT: That, that clarifies that issue for me.
20 So, frankly, that puts my mind at ease about what happened
21 there.

22 Now, Mr. Harpootlian, I'll come to you momentarily.
23 Anything else?

24 MR. WATERS: No, ma'am, Your Honor.

25 THE COURT: Okay. Now, Mr. Harpootlian.

1 MR. HARPOOTLIAN: A couple things I, I -- I'd like to
2 point out. The first is this. In terms of the statement
3 by this alternate juror, she was interviewed by SLED on
4 video. Said exactly the same thing that she's saying in
5 this affidavit weeks if not months ago. So, they know
6 exactly what she said. I can assume they've reviewed it.

7 By the way, I asked -- basically read from this
8 affidavit as I cross-examined the clerk, and she denied
9 each one of these statements.

10 The second piece of that is this.

11 THE COURT: I know. It's on that basis that I'm even
12 pursuing the idea of your offering something by way of
13 impeachment. So, I understand that.

14 MR. HARPOOTLIAN: And secondly, as to the sealed
15 exhibits, I think we're going to hear testimony from Ms.
16 McElveen that may elaborate on your concerns based on our
17 interview with her this morning.

18 THE COURT: All right. Well, here's what we're going
19 to do. It's about 3 minutes of 3, which is when I
20 generally take my afternoon break. I'm going to adjourn
21 the court or recess the court, and we come back at 3:15,
22 and I will allow you to offer Ms. McElveen and the
23 alternate.

24 I want to make it clear that they will be offered on
25 what we've talked about: matters about which Ms. Hill

1 testified that you think are impeached by Ms. McElveen's
2 testimony and that you think are impeached by the alternate
3 juror's testimony. So, it's -- and the alternate juror's
4 testimony, as I look at it, is the part that -- about which
5 impeachment would lie would begin at paragraph 3.

6 MR. HARPOOTLIAN: Yes, ma'am.

7 THE COURT: So, you understand what I'm saying?

8 MR. HARPOOTLIAN: Yes, ma'am. I'll make you one other
9 offer.

10 THE COURT: Yes, sir.

11 MR. HARPOOTLIAN: Today and today only. Egg lady is
12 across the street.

13 THE COURT: Well, I ---

14 MR. HARPOOTLIAN: No, no, no. If you want to put her
15 on the stand.

16 THE COURT: No, no. I've made my position quite clear
17 on that. I think we've got in the record what is needed in
18 terms of what she says Ms. Hill says and what Ms. Hill says
19 she says.

20 MR. HARPOOTLIAN: I, I agree. We did not intend on
21 calling her. I didn't want you miss the opportunity if you
22 wanted the opportunity to examine her.

23 THE COURT: Thank you, Mr. Harpootlian.

24 All right, court will be in recess until 3:15.

25 (OFF THE RECORD.)

1 THE COURT: Please be seated.

2 All right, Mr. Harpootlian, I believe it's you to
3 present your witness.

4 MR. HARPOOTLIAN: Yes, ma'am.

5 THE COURT: Please do.

6 MR. HARPOOTLIAN: Rhonda McElveen.

7 RHONDA McELVEEN, BEING DULY SWORN,
8 TESTIFIES AS FOLLOWS:

9 CLERK OF COURT: Thank you. Please have a seat on the
10 witness stand. State your full name for the record, and
11 please spell your first name and last name.

12 WITNESS: Rhonda McElveen, R-h-o-n-d-a
13 M-c-e-l-v-e-e-n.

14 DIRECT EXAMINATION BY MR. HARPOOTLIAN:

15 Q. Ms. McElveen.

16 A. Yes, sir.

17 Q. Say your name. Say your name for the record again,
18 please, so I can make sure I can hear you.

19 A. Rhonda McElveen.

20 MR. HARPOOTLIAN: Your Honor, can you hear me?

21 THE COURT: I can't hear you great, Dick. I can hear
22 you, but I would doubt that anybody past the lawyers can
23 hear you.

24 MR. HARPOOTLIAN: Is that better?

25 THE COURT: Is that thing on, Mr. Bailiff? I don't

1 want to get into the thing going haywire again.

2 MR. HARPOOTLIAN: Well, I can speak up; I'll just
3 speak up. How about that?

4 THE COURT: It's just not on at all, though.

5 MR. HARPOOTLIAN: No, it's on.

6 THE COURT: Is it on? Okay. All right, Mr.
7 Harpootlian, you may proceed.

8 MR. HARPOOTLIAN: I'll speak a little louder.

9 THE COURT: Thank you.

10 Q. Say your name again for the record, please.

11 A. Rhonda McElveen.

12 Q. And, Ms. McElveen, what do you do for a living?

13 A. Clerk of court and ROD for Barnwell County.

14 Q. Clerk of court and what?

15 A. Register of deeds. I have two titles.

16 Q. Two titles, and is that an appointed or an elected
17 position?

18 A. Elected.

19 Q. So, you're elected by the people of Barnwell County?

20 A. Yes, sir.

21 Q. And how long have you been the clerk of court for
22 Barnwell County?

23 A. This is my sixteenth year.

24 Q. Sixteen years and ---

25 A. And I'm running again, sir.

1 Q. You're up this year, '24?

2 A. Yes, sir.

3 Q. All right. Don't think I'm allowed to plug that, but
4 you have been a clerk for sixteen years. You're up again
5 this year. Now, do you know the clerk of -- well, back up
6 just a second. Do you hold any position with -- is there a
7 state organization of clerks of court?

8 A. Yes, sir. I'm actually the president of the South
9 Carolina Clerk of Court and Register of Deeds.

10 Q. Okay, and that means that of the forty-six -- there
11 are forty-six of y'all. Is that right?

12 A. Yes, sir. Yes, sir.

13 Q. And you were elected to be the chairman of that group?

14 A. President of that group.

15 Q. President of that group. Now, do the -- are there
16 certain rules and, and, and constraints that clerks should
17 operate under in terms of dealing with juries?

18 A. Yes, sir.

19 Q. And is there training for that or a book for that, or
20 how do you learn that?

21 A. You have your clerk of court manual for one; that's on
22 the judicial website. You also have the law books that
23 have it in there. There is actually two separate forms,
24 SCCA 237 and 238, maybe, that has regulations in it, and
25 then we also have in the handbook that -- or not handbook

1 but in the program within the CMS system, they actually
2 have rules and stuff you can go by as well.

3 Q. Now as a clerk of court, are part of your duties to
4 deal with juries?

5 A. Yes, sir.

6 Q. To, to -- I mean, we understand there's a jury venire
7 that's brought in at the beginning of a term, and then
8 individual juries are picked for both civil and criminal
9 cases. Is the correct?

10 A. That is correct, unless it's a nonjury trial.

11 Q. And then there's just a judge like we're doing here,
12 right?

13 A. Yes, sir.

14 Q. And in the process of picking juries, do you assist as
15 clerk of court -- when I say assist, who, who actually
16 picks the -- picks the jurors out of a hat or however,
17 whatever the process is?

18 A. Well, actually the first process is you draw a jury by
19 computer through the CMS system, and summonses are sent
20 out. And then once we come to court, we usually do a roll
21 call to see what everybody's doing, their jobs and
22 everything, to help the attorneys decide which jurors they
23 would like to get. They have so many strikes, et cetera.
24 And then you call the names and have the strikes, and then
25 that's, that's your jury pool.

1 Q. And then the judge will seat a jury in a jury box like
2 -- although I've never quite seen a jury box that looks
3 like that, but a jury box in a courtroom, right?

4 A. That is correct.

5 Q. Your jury box in Barnwell County, like, two rows of
6 seven or eight people?

7 A. Well, I actually have a jury box on both sides of the
8 courtroom. I have the grand jury on one side that convene,
9 and then I have the petit jury on the other side when they
10 convene.

11 Q. Okay, and the jury, they're sworn by the judge, and
12 then they're put in the jury box, and then they begin to
13 hear arguments and testimony and jury charges by the judge.
14 Is that correct?

15 A. Well, actually, sir, where we do it, the clerk of
16 court usually swears them in with the judge presiding over
17 the whole deal.

18 Q. Once that jury is sworn in, what is your role in terms
19 of dealing with those jurors individually or as a group?
20 Are you allowed to talk to them individually? To pull them
21 out to converse with them about your opinion about the
22 case?

23 A. To pull them out of the trial while we're going on? Q.
24 Yes, ma'am.

25 A. No, sir, we're not. If they're on a break, et cetera,

1 or if they request to see someone, then we manage --
2 actually, I'll go in, the door open. I'll say which one of
3 you needs to see someone. It might be the judge, and I'll
4 say hold on, and then I'll go get my judge. Say we've got
5 a juror that needs to speak with you.

6 Q. And do you converse with jurors about the merits of
7 the case, the merits of whether someone is guilty or
8 innocent or whether a plaintiff or a defendant should win
9 in a civil case? Do you ever do that?

10 A. No, sir. About the most, the only thing I ever do is
11 go in and count them and tell them I can count up to
12 fourteen without even using my toes, and then I might get
13 their lunch order. That's it, and the doors are usually
14 open when I'm doing that.

15 Q. And you have bailiffs that sit with the jury or sit
16 outside the jury room?

17 A. They sit outside the jury room, and usually there's
18 one beside them in the courtroom in case somebody needs
19 something, but usually they'll catch my eye or they'll
20 catch the judge's eye and we'll get something handled.

21 Q. So, did you have any contact with the clerk of court
22 in Colleton County prior to her being elected the clerk of
23 court of Colleton County? Did you know her before she was
24 the clerk of court?

25 A. No, I did not.

1 Q. Did you come to know her once she was elected clerk of
2 court?

3 A. Yes, I did.

4 Q. And was it a pleasant relationship?

5 A. It was.

6 Q. And how did you come to be -- cut to the chase. You
7 ended up being in the courtroom during the *Murdaugh* trial
8 for part of those six weeks. Is that correct?

9 A. Yes, sir.

10 Q. How did you come to be there?

11 A. When Becky and I met each other at a conference, clerk
12 of courts conference, she was discussing that she had that
13 trial coming up, and I knew that she was relatively new,
14 and I said I'll offer to come help you if you would like.
15 And I think she ended up talking to Judge Newman about it,
16 and they both said yes, it would be good that I was there.

17 Q. Okay. You tried a murder case or two in the past,
18 correct?

19 A. Yes, sir.

20 Q. Okay, and did you go and help Becky Hill try that
21 murder case?

22 A. I did. I couldn't go for the first three days because
23 I had court going on in Barnwell, and I could not be in
24 Colleton County.

25 Q. Okay. Now to your knowledge, had Ms. Hill ever been a

1 clerk of court that managed a murder trial prior to this?

2 A. Not that I'm aware of, sir.

3 Q. So, this was her first murder trial as far as you
4 know?

5 A. As far as I know of this magnitude. I don't know if
6 they one before then or not.

7 Q. Now, when -- did y'all -- initially, what were you
8 talking about in terms of logistics and how you did it and
9 all those sorts of things?

10 A. Yes, sir.

11 Q. During that -- before the trial, before we ever picked
12 a jury, did you -- did she ever discuss with you that she
13 was going to write a book?

14 A. Yes, sir, that she wanted to write a book, yes, sir.

15 Q. She wanted to write a book. Did she indicate what the
16 book was going to be about?

17 A. About the trial.

18 Q. About the *Murdaugh* trial?

19 A. Yes, sir.

20 Q. And did she discuss with you -- what, if anything, did
21 she discuss with you about how she felt the verdict should
22 turn out to be in the *Murdaugh* trial vis a vis in reference
23 to the book, what would help the book?

24 A. A guilty verdict.

25 Q. Tell the judge and, and me what exactly she said to

1 you that you remember. This is prior to the trial.

2 A. Okay. Well, first of all, she said we might want to
3 write a book because she needed a lake house and I needed
4 to retire, and from then, further conversation was that a
5 guilty verdict would sell more books, and we left it at
6 that. This was before even in December.

7 Q. And, and when, when -- did she ever say that again to
8 you during this -- the, the weeks you spent there?

9 A. Several times. It could be said -- it was, you know,
10 amongst friends in her office or we might be having dinner,
11 that kind of stuff, but that's about it.

12 Q. That she needed a guilty verdict to sell more books?

13 A. That would be the best way to sell books, yes, sir.

14 Q. The best way to sell books.

15 Now, during this -- during this process, did she ever
16 express to you an opinion on whether or not, in fact, was
17 Mr. Murdaugh guilty of the murders of his son and his, his
18 wife?

19 A. Yes, sir.

20 Q. Tell me. Tell me what she said and if you remember
21 when.

22 A. I don't exactly remember when. I know it's over half
23 of the trial had already happened, but the evidence was
24 coming forth that it looked like he might be guilty. She
25 made a comment that guilty verdict would be better for the

1 sale of books.

2 Q. Okay. Now, as a result of a conversation you had
3 sometime during the trial -- I don't want you to relay to
4 me the, the -- what was told you. Did you have a
5 discussion with the clerk, Becky Hill, about her being with
6 jurors on her own?

7 A. Yes, sir, I did. One morning I showed up to Colleton
8 County, and I was told that she had taken a juror home the
9 night before, and I was in the courtroom and I saw her.
10 And it was between the pews and where the back row pews
11 are, and I mentioned to Ms. Becky. I said please tell me
12 you didn't take a juror home last night. And she told me,
13 she says I did but I didn't talk about the case. I had a
14 bailiff with me; Mr. Bill was with me. I said Becky, you
15 don't do things like that.

16 I thought we had stopped everything and wasn't far
17 enough along to really cause a major problem, or I would
18 have told Judge Newman. But I thought we had an
19 understanding that you did not spend time alone with the --
20 with the jurors.

21 Q. Okay. Now, I'm going to read you some statements.
22 Well, first of all, did you ever hear her say anything in
23 front of you to a juror about whether or not -- on the
24 merits of the case? That is, whether or not he was guilty
25 or innocent or what you should pay attention to? Did you

1 ever hear her -- what, if anything, did you ever hear her say to
2 a juror or in the presence of a juror? Anything?

3 A. No, sir.

4 Q. Okay, but let me ask you if you've ever heard her say
5 these statements and if so, to who: Don't be fooled by the
6 evidence presented by Mr. Murdaugh's attorneys. Which I
7 understand -- I mean: Do not be fooled by the evidence
8 presented by Mr. Murdaugh's attorneys. You ever hear her
9 say that?

10 MR. WATERS: Your Honor, at this time I would object.
11 This witness was specifically called as a Rule 16-3(b)
12 extrinsic evidence. I think we've covered the two grounds
13 that would be permissible for her to testify to, and I
14 believe that that should be the extent of her testimony.
15 So, we would object to any further extrinsic evidence as
16 improper impeachment and also irrelevant.

17 I think that the issues that were raised with the
18 prior witness have been covered, and that was the express
19 reason that this witness was called, and Your Honor will
20 have the testimony.

21 THE COURT: Overruled.

22 You may continue.

23 MR. HARPOOTLIAN: Thank you, Your Honor.

24 Q. Did you ever hear her say that?

25 A. Can you repeat the verbiage?

1 Q. Don't be fooled by the evidence presented by Mr.
2 Murdaugh's attorneys.

3 A. Yes, I did.

4 Q. And was it -- who was it said to?

5 A. It was said to me.

6 Q. Okay.

7 A. And sometimes it might be a staff member in her, her
8 office or someone from the media there, but other than
9 that, I didn't hear her say it out there in front of any
10 jurors.

11 Q. Did she ever say to you or to other people around you,
12 not talking about jurors:

13 Watch him closely.

14 Talking about Mr. Murdaugh.

15 Just, just before he testifies. Look at his
16 actions. Look at his movements.

17 Did you ever hear her say that?

18 A. Yes, sir.

19 Q. Okay. Did you ever have any conversations with the
20 bailiff, Mr. Bill?

21 A. Yes, sir.

22 Q. Did he ever discuss with you the clerk's contact with
23 jurors?

24 A. No, sir.

25 Q. Okay. Did you ever hear her say that the defense was

1 going to try to confuse the jurors? Did you ever hear her
2 say that?

3 A. No, sir, I don't think so.

4 Q. Okay. Now, let me deal with one last area. Let me
5 see if I can simplify this. There were -- there was a
6 setup in the courtroom ---

7 MR. HARPOOTLIAN: Pardon me. Got a little frog in my
8 throat, and I'm fine. Thank you.

9 WITNESS: I'll share my bottle over here if he wants
10 part of it.

11 MR. HARPOOTLIAN: Once a clerk, always a clerk.

12 Q. So, I was there. You were there. This judge was not
13 there, and prosecution table's over here. Defense table's
14 over here. Judge is up here, and then there's a rail
15 behind which the clerk was and because of all the massive
16 electronic equipment we had and the big screens, there was
17 an area over on my right facing the judge, and then I think
18 you were located in that area right between the judge in
19 that area. Is that correct?

20 A. You talking about in the well area?

21 Q. Yes, ma'am.

22 A. Okay. Yes, sir.

23 Q. Now.

24 A. For the most part. Sometimes I was out there with the
25 screen.

1 Q. Right.

2 A. In the gallery.

3 Q. Right, but there was a screen in -- on which you can
4 see not only what the gallery back there could see but the,
5 the, the images that only the jury was supposed to see that
6 were under seal. Is that correct?

7 A. That is correct.

8 Q. Now, there's a woman named Ronda. A writer, correct?

9 A. Rich.

10 Q. Rich. Tell me who she is.

11 A. At the time, we did not know who she was. The first
12 time -- the first time they were there, we didn't know.
13 And then she came in Ms. Becky's office the night before,
14 and she asked if she could have another seat in the
15 courtroom for the next day, and Ms. Becky said yes. And
16 she says and what's your name again. And the only reason
17 why I remember Ronda because, of course, my name being
18 Rhonda. And the next day Ms. Rich was sitting -- I don't
19 know how to tell you, but she was sitting -- do you know
20 where Doug was sitting?

21 Q. Yes, ma'am.

22 A. All right.

23 WITNESS: I know, Judge, you don't know where Doug was
24 sitting, but anyhow.

25 Q. But Doug was the audiovisual guy, and he had access to

1 the unscreened, the unsealed images, correct?

2 A. Yes, sir.

3 Q. And she was sitting right next to him, right?

4 A. Yes, sir, in that little part.

5 Q. So, she could see the body cam. She could see the
6 unredacted court pictures, the autopsy pictures, all the
7 photos that the judge had sealed, correct?

8 A. Well, no. Only thing she could see was what was being
9 put up at the time.

10 Q. Right. Right.

11 A. Okay.

12 Q. But as they were put up, she could see them.

13 A. Right, but they tried their best to seal it where you
14 couldn't, but you could still see it there. I didn't see
15 any of those, okay?

16 Q. Right, but she could see it.

17 A. Right, and Doug was really having a problem with that,
18 and I can also tell you that our court reporters didn't
19 know who she was either, okay?

20 Q. And she turns out to be a writer, correct?

21 A. Yes, sir. After, I found out. Yes, sir.

22 Q. Her name is Ronda Rich?

23 A. Correct.

24 Q. She was given access to areas that only court
25 personnel should have had access to?

1 A. Right, but then, then we broke, and then she moved her
2 in the well with me. She was on my left, and either
3 Elizabeth or Mike was on my right, and I noticed she was
4 taking notes, and I asked her what was she doing taking
5 notes. She said I'm a Sunday school teacher. Well, I
6 immediately covered up everything I had, so.

7 Q. You don't trust Sunday school teachers? You don't
8 trust Sunday school teachers?

9 A. Let me just -- there's too many preachers in my family
10 on both sides, okay?

11 Q. So, you determined she was not a Sunday school
12 teacher. You later learned on -- learned that she was a
13 writer writing about the *Murdaugh* case, correct?

14 A. I don't know if she was ever a Sunday school teacher
15 or not. I don't know even know where she goes to church or
16 anything, so I can't tell you that answer. But I did find
17 out she was a writer because after -- shortly after she was
18 put there, and evidently after I covered everything up,
19 shortly after that Judge Newman asked for a recess so we
20 could find where people were going to be working. And
21 that's when we point -- she put Ms. Rich out in the gallery
22 in control of that screen.

23 Q. And, and she ended up writing the foreword to Becky's
24 book. Is that correct?

25 A. That's -- yes, sir.

1 Q. Okay, and Becky gave her access to areas only court
2 personnel should have had. Is that correct?

3 A. That is true, but now I'll be honest with you, sir.
4 There's been a couple times when we had other people that
5 were sitting on that side. We weren't planning on seeing
6 sealed documents that day.

7 Q. Right.

8 A. But there were some other people that sat there but
9 nobody that actually sat in the well that wasn't court
10 people.

11 MR. HARPOOTLIAN: Beg the court's indulgence.

12 THE COURT: Mr. Waters on cross-examination.

13 MR. HARPOOTLIAN: Your Honor, if I could have just one
14 second?

15 THE COURT: Oh. Okay.

16 (A PAUSE.)

17 WITNESS: Judge, do you have an extra bottle of water
18 up there you're willing to share?

19 THE COURT: Sure.

20 WITNESS: Oh. Ms. Elizabeth's got one. Thank you.

21 THE COURT: Great.

22 MR. HARPOOTLIAN: Your Honor, I'm done with this
23 witness. Thank you.

24 CROSS-EXAMINATION BY MR. WATERS:

25 Q. Ms. McElveen, how are you doing today?

1 A. I'm good, sir. Please call me Rhonda.

2 Q. I always called you Ms. Rhonda. I've known you a long
3 time as well.

4 A. Yes, sir.

5 Q. In fact, I tried one of those murder cases in front of
6 you years ago. Is that right?

7 A. Yes, sir.

8 Q. Wanted to ask a couple of things. I won't be that
9 long, and one of the things that you said earlier is you
10 said when you initially were talking to Ms. Hill, you said
11 she said something like we ought to write a book or
12 something?

13 A. That is correct.

14 Q. Okay, and so did y'all have any further discussion
15 about you writing a book or participating in a book?

16 A. Oh, no, sir.

17 Q. Or anything like that?

18 A. I'm crazy enough not to write one.

19 Q. Okay. During the course, though -- after the trial,
20 she did send you, like, chapters and things like that to
21 take a look at?

22 A. We did -- I did get to see a couple of drafts of the
23 -- of the manual.

24 Q. Okay. So, she did send you those to take a look at to
25 review and that sort of thing. Is that correct?

1 A. Correct.

2 Q. Okay. All right, and you were asked a ---

3 MR. WATERS: And again, Your Honor, just to, to be
4 clear, I've made some objections.

5 THE COURT: You do not waive any objections by
6 cross-examination. They are all preserved.

7 MR. WATERS: Thank you, Your Honor.

8 THE COURT: You may proceed.

9 MR. WATERS: Thank you, Your Honor.

10 Q. You mentioned, you know, some statements that you
11 attributed to, to Ms. Hill, you know, during the course of
12 conversations during the course of trial. Is that correct?
13 Just, just things like watch him closely, watch his
14 mannerisms?

15 A. Correct. Correct.

16 Q. Things like that, and where were those conversations?
17 Were those conversations taking back -- taking place back
18 in the clerk's offices with the clerk's staff and people
19 like that?

20 A. Yes, sir, in the clerk's office. It might have been
21 downstairs in the bathrooms.

22 Q. Okay.

23 A. Some of us had privileges to go to.

24 Q. All right. So, y'all, you and Ms. Becky and, and
25 other court staff maybe just discussing the case and that

1 sort of thing. Is that correct?

2 A. That's correct.

3 Q. And people were expressing their opinions about what
4 was going on and that sort of thing. Is that correct?

5 A. No. When we were having those discussions, there
6 weren't more than to one or two, three people there.

7 Q. Okay, but just a few people there just talking about
8 behind the scenes. That's what I'm driving at.

9 A. Yes, sir, behind the scenes.

10 Q. It was behind the scenes, and it's not uncommon for,
11 you know, clerk's staff behind the scenes. Not to the
12 parties, not to the litigants, not to the jurors, but among
13 themselves back in -- you know, in the hallways back there
14 to talk about the day's activities and things like that.
15 Is that -- is that fair?

16 A. That's correct.

17 Q. Okay, and that's a big difference between the natural
18 conversations of people that work together, court staff and
19 the like, have with each other and actually having those
20 conversations in front of the jurors, right? There's a big
21 difference between those two, correct?

22 A. Yes, sir.

23 Q. Okay, and it's not uncommon for you. You're a clerk
24 of court. You got people that work for you. Y'all are
25 going to have a lot of conversations about what's going on

1 that are not to be shared, particularly with jurors, but,
2 but with the public as well. Is that fair to say?

3 A. That is true.

4 Q. Okay, and so there, there were conversations like that
5 going on that, that you were privy to and part of. Is that
6 correct?

7 A. That's correct.

8 Q. All right, and you mentioned a little bit about --
9 well, let me ask you this. There are all these
10 conversations going on, and that's natural. That happens,
11 private conversations with court staff behind closed doors,
12 but you never once saw or observed or had anyone tell you
13 that any of those conversations were being shared by Ms.
14 Becky with any jurors. Is that right?

15 A. That is correct.

16 Q. All right, and if -- and if that had happened, if you
17 had observed anything untoward or improper going on at this
18 particular trial, you would have immediately gone to Judge
19 Newman as part of your obligation. Is that correct?

20 A. That is correct.

21 Q. And you never did that because you never observed
22 anything like that. Is that correct?

23 A. That is correct.

24 Q. All right. All right. Now, you were asked a little
25 bit about Ronda Rich, who was a member of the media and how

1 she was placed kind of back where the defense IT guy was.

2 Is that correct?

3 A. I didn't say she was part of the media, sir.

4 Q. Okay. Well, she was a writer.

5 A. Yes, sir.

6 Q. Okay. All right, and then you said that, that
7 eventually, though, Judge Newman stepped in and then she
8 was moved out into the -- into the gallery in charge of the
9 screen out there. Is that ---

10 A. Right, but I don't know -- I thought Ms. Becky moved
11 her. I'm not saying Judge Newman did.

12 Q. Okay. All right, and over there in that area of the
13 -- if, if we look in the courtroom, there was sort of the
14 grand jury box over here, and that was where Court TV and
15 media was stationed and that sort of thing. Is that
16 correct?

17 A. That is correct.

18 Q. All right, and, and inevitably there were media
19 members that could view some of the images that were being
20 shown, and they were being shown, and they were just not
21 able to report, but just because of the nature of the way
22 the courtroom was. Is that accurate?

23 A. Well, I was told they couldn't see it, so I don't know
24 what they actually saw. I didn't discuss it with the
25 media.

1 Q. All right. You never had a conversation with Court TV
2 or anything like that?

3 A. Other than the fact that be careful what they put on
4 the front page of the *New York Times* on me.

5 Q. All right. All right, and you're not aware of any
6 image or confidential information or sealed image or
7 anything like that that was ever made privy to Ms. Rich
8 that, that was ever put in any sort of publication or
9 anything like that. Is that correct?

10 A. Not that I'm aware of, sir.

11 Q. Okay, because if you had found out about that, too,
12 you would have immediately gone and reported that to Judge
13 Newman because you would have said that's improper, that I
14 need to go report to, to the judge, correct?

15 A. Correct.

16 Q. And you never once saw anything during the entire
17 course of this trial that caused you to say you know what?
18 I got to go talk to Judge Newman. Something ain't right
19 about what's going on here. Is that correct?

20 A. That is correct.

21 Q. And you would have done that without a doubt if you
22 had seen that, correct?

23 A. Yes, sir.

24 Q. All right. Now in looking at, you know, back at this
25 trial, you, you mentioned that there was a few days at the

1 beginning of trial that you weren't there because you had
2 your own court to take care of back in Barnwell County,
3 correct?

4 A. Correct.

5 Q. All right, and then pretty much after that, I guess
6 you were pretty much present the majority of the remainder
7 of the time. Is that fair to say?

8 A. I was.

9 Q. Okay.

10 A. I had one medical procedure done. I missed two days,
11 but basically other than that, I was there every day.

12 Q. All right, and there was a period of time, though,
13 during the middle of the trial where Ms. Becky had, had a
14 medical issue and, and had to be absent from the courtroom
15 for about a week or something like that.

16 A. That is correct.

17 Q. Okay, and during that period of time, you were present
18 and, and functioning as the lead clerk of court during that
19 time.

20 A. That's correct.

21 Q. All right. So, the reality is, is that you were
22 present for, you know, probably as much if not more than
23 anyone in the clerk's function, function during the course
24 of this trial. Is that fair?

25 A. Yes, sir.

1 Q. Okay, and, and again, just to reiterate, there was not
2 one time that you observed or came in possession of any
3 information that you were, like, I got to go talk to Judge
4 Newman about this?

5 A. No, sir.

6 MR. WATERS: Court's indulgence one moment.

7 (A PAUSE.)

8 MR. WATERS: Nothing further, Your Honor.

9 THE COURT: Very good.

10 Mr. Harpootlian, yes, sir.

11 MR. HARPOOTLIAN: Half a -- half a question.

12 THE COURT: All right.

13 REDIRECT EXAMINATION BY MR. HARPOOTLIAN:

14 Q. Mr. Waters indicated to you that you were not aware
15 whether or not -- and you agreed you never witnessed her
16 talking to a juror about the evidence. Is that correct?

17 A. That's correct.

18 Q. We agree on that. Do you know -- and -- but she did
19 admit to you that she had -- she had been with a juror
20 alone in a car for some period of time when you confronted
21 her with that. Is that correct?

22 A. Yes, sir.

23 Q. And did she indicate to you what she talked to that
24 juror about while they were alone in the car?

25 A. No, sir. She told me -- the only thing she told me

1 was that she did not discuss the case. That she had Mr.
2 Bill, the bailiff, with her and he could tell her that --
3 tell, tell that.

4 Q. And, and when she said she didn't discuss the case,
5 did you bring that up or did she bring that up?

6 A. She brought that up.

7 Q. You didn't say shouldn't be with him because it's
8 frowned upon?

9 A. I did tell her that. I cautioned her on doing that
10 because the perception of dealing with the jurors
11 one-on-one was not tolerated.

12 Q. Is not tolerated?

13 MR. HARPOOTLIAN: Thank you.

14 THE COURT: Thank you, Ms. McElveen. You may be
15 excused.

16 WITNESS: Thank you, ma'am.

17 (THE WITNESS EXITS THE STAND.)

18 (A PAUSE.)

19 (AFFIDAVIT OF ALTERNATE JUROR MARKED INTO EVIDENCE AS
20 COURT'S EXHIBIT NUMBER 5.)

21 THE COURT: All right, Mr. Harpootlian, call your next
22 witness.

23 MR. HARPOOTLIAN: Your Honor, we call Juror 741.

24 THE COURT: I know you're not going to -- well, that's
25 right. She's an alternate. That's all right.

1 MR. HARPOOTLIAN: Somebody's going to get her, Your
2 Honor. We're not going to assign her a letter. We'll just
3 go with 741.

4 THE COURT: I gotcha.

5 MR. HARPOOTLIAN: And, Your Honor, while she's coming,
6 my understanding is I'm limited to four questions.

7 THE COURT: Yes, sir. I have a copy and I have given
8 the court reporter a copy of this affidavit with the name
9 obscured and the number, I think, as well, but the
10 affidavit that supports this testimony which you're about
11 to offer is Court's Exhibit 5.

12 MR. HARPOOTLIAN: Other than a little factual
13 background about her getting picked for the jury and how
14 long she was on the jury.

15 THE COURT: That's fine.

16 MR. HARPOOTLIAN: When she was excused. That's all we
17 intend on asking, these four questions.

18 THE COURT: All right.

19 MR. HARPOOTLIAN: Unless Mr. Waters asks ---

20 THE COURT: Sure. I mean, they'll have
21 cross-examination.

22 MR. MEADORS: And I'll be crossing, so ---

23 MR. HARPOOTLIAN: Oh, he'll definitely open the door.

24 MR. MEADORS: So, he's limited to the four questions
25 initially. Is that ---

1 MR. HARPOOTLIAN: Yes.

2 THE COURT: No, sir. He's just telling me that's what
3 he intends to do. Sometimes you can hold lawyers to that.

4 MR. MEADORS: I understand.

5 THE COURT: And sometimes you can't.

6 MR. MEADORS: Yes, ma'am. Thank you.

7 MR. HARPOOTLIAN: I intend on only asking her those
8 four questions.

9 THE COURT: That's fine.

10 MR. HARPOOTLIAN: She's in the building, Your Honor.
11 I'm sorry.

12 (A PAUSE.)

13 ALTERNATE JUROR 741, BEING DULY
14 SWORN, TESTIFIES AS FOLLOWS:

15 CLERK OF COURT: Please have a seat on the witness
16 stand.

17 MR. HARPOOTLIAN: Your Honor, I assume that the same
18 rules would apply to her that applied to the other jurors
19 in terms of her image appearing?

20 THE COURT: That's correct. There will be no
21 photographs made of this particular witness who was an
22 alternate juror in the matter. Thank you.

23 DIRECT EXAMINATION BY MR. HARPOOTLIAN:

24 Q. I'm going to refer to you as Juror 714. It's what
25 we've got to do here so we don't use your name so people

1 don't know who you are. Is that okay with you?

2 A. That's fine.

3 Q. And you and I have met before?

4 A. Correct.

5 Q. I came to your home one Sunday afternoon. I believe
6 you were cooking Sunday dinner when we talked. Is that
7 correct?

8 A. Correct.

9 Q. And then you were interviewed by SLED?

10 A. Correct.

11 Q. And you Gave them a recorded statement, and then this
12 morning you came here, and you gave me an affidavit that
13 you signed, and you're here with your lawyer. Is that
14 correct?

15 A. Correct.

16 Q. Now, just for purposes of the record, you were a
17 juror. You were selected to be a juror on the *State v.*
18 *Alex Murdaugh* murder charge, correct?

19 A. Correct.

20 Q. And you sat in the courtroom six weeks and listened to
21 all the testimony?

22 A. Correct.

23 Q. And you were the alternate?

24 A. Correct.

25 Q. And so when the jury went out to deliberate, you were

1 excused. Is that correct?

2 A. Correct.

3 Q. Now, I'm way going to go through a series of questions
4 based on your affidavit, okay?

5 A. Okay.

6 Q. Which you signed this morning which was based on our
7 initial interview with you and your interview with SLED.
8 This is basically the same thing you told SLED, correct?

9 A. Correct.

10 Q. In your affidavit, you say: Before the defense put up
11 their case ---

12 MR. MEADORS: I'm going to object to leading.

13 THE COURT: Sir?

14 MR. MEADORS: Leading.

15 THE COURT: Overruled.

16 Go ahead.

17 MR. HARPOOTLIAN: Okay. Thank you.

18 Q. In your affidavit, you said:

19 Before the defense put up their case, Ms. Hill
20 told the jurors the defense is about to do their
21 side. They're going to say things that will try
22 to confuse you. Don't let them confuse you or
23 convince you or throw you off, unquote.

24 Is this true? Did Ms. Hill say that?

25 A. Accurate. That's exactly what she told us.

1 Q. I'm sorry?

2 A. That's exactly what she told us.

3 Q. Okay. The next thing you say is:

4 Ms. Hill made the above statement warning the
5 defense would try to confuse us in the presence
6 of all the jurors as we assembled in the same
7 jury room.

8 Is that correct?

9 A. Correct.

10 Q. Now, y'all were initially in two ---

11 A. We were in two separate rooms, and when she came in,
12 we all went in one room.

13 Q. Okay. Paragraph number 5:

14 Ms. Hill said if you get emotional, we want to
15 see your face because that is what they want to
16 see.

17 What did -- what did that ---

18 A. She said don't -- she said don't get nervous. Don't
19 be afraid to show your emotions because that's what they
20 want to see.

21 Q. Who wants to see it?

22 A. I, I don't know who she was speaking of. I'm assuming
23 the Court.

24 Q. Okay, and then number 6:

25 Ms. Hill also informed us Alex Murdaugh was going

1 to testify. I don't recall exactly what she
2 said. All the jurors were assembled in one room
3 when she made that comment.

4 A. Exactly.

5 Q. So, she told you that Alex Murdaugh was going to
6 testify?

7 A. Exactly.

8 Q. Did you know before that he was going to testify?

9 A. I think we knew that he was going to come up. I think
10 he was supposed to do it the day before, but he didn't. I
11 knew he, he was going to be the last person that afternoon.

12 Q. Okay.

13 During the visit to Moselle, Juror Number 826 and
14 I walked to the scene together. Then Juror 826
15 began walking with the clerk of court, Becky
16 Hill. I could tell they were talking. I could
17 not hear what was said between them.

18 Is that correct?

19 A. Correct.

20 Q. If what you put in this affidavit truthful?

21 A. Yes, sir.

22 Q. And this is what you told us back in ---

23 A. I don't remember the month.

24 Q. --- August, I believe. I think I interrupted you
25 cooking Sunday dinner.

1 A. Right.

2 MR. HARPOOTLIAN: All right, thank you. Please answer
3 any questions defense may have for you.

4 THE COURT: Mr. Waters or Mr. Meadors.

5 MR. MEADORS: Thank you, Your Honor. May it please
6 Your Honor?

7 CROSS-EXAMINATION BY MR. MEADORS:

8 Q. Good afternoon, Ms. 741.

9 A. Good afternoon.

10 Q. It's nice to see you again.

11 When is the first time you talked to Mr. Harpootlian
12 or Mr. Griffin or any other attorney?

13 A. I couldn't tell you exactly. It's been months. It's
14 probably been September, August. It's been months.

15 Q. And were they the first attorneys to talk to you, or
16 was there somebody else that talked to you prior to them?
17 Did any other attorney ---

18 A. No. I think he was the first person I talked to.

19 Q. Are you sure?

20 A. I think. It was so many people trying to call me, and
21 I was trying not to be involved. So, I can't -- I can't
22 quite remember, but he was the first person I had seen.

23 Q. First person in person?

24 A. Yes.

25 Q. Okay. So, when he came to your house?

1 A. Yes.

2 Q. Mr. Harpootlian came to your house?

3 A. Yes.

4 Q. And at that point, was Ms. Holli with him?

5 MR. MEADORS: Holli, would you mind raising your hand?

6 A. Yes.

7 Q. And was anybody else with him?

8 A. Yes. He was.

9 Q. Mr. Griffin?

10 A. Mr. Griffin.

11 Q. Thank you, and you gave them a statement then, right?

12 A. Right.

13 Q. And did they record you? I mean, were they audio or
14 video recording you? Did they say we'd like to record
15 this?

16 A. No.

17 Q. They didn't?

18 A. But neither did the people that came out. They didn't
19 -- I didn't know I was getting recorded by them neither.

20 Q. That's -- I'm not trying to fuss.

21 A. Okay.

22 Q. I'm just asking, but is there an audio recording of,
23 of your conversation with them that you know of?

24 A. No.

25 Q. Did they say ---

1 A. Not that I know, no.

2 Q. So, you don't remember ---

3 MR. HARPOOTLIAN: Your Honor, there's no audio
4 recording. We're required to tell her we're recording her
5 under the rules.

6 THE COURT: He's on cross-examination.

7 Mr. Meadors.

8 MR. MEADORS: Thank you, Your Honor.

9 Q. And at that point -- and that was again -- do you
10 remember, you said you think was -- was that around the end
11 of August, first of September when they first came to talk
12 to you, roughly?

13 A. Roughly. I don't want to...

14 Q. And you told them basically everything that you've
15 told us now, right?

16 A. Yes.

17 Q. The exact same thing?

18 A. Exact same thing.

19 Q. Nothing less, nothing more?

20 A. Yes.

21 Q. Okay. So, Mr. Harpootlian just -- and you didn't --
22 you didn't sign an affidavit back in September or when you
23 talked to them the first time?

24 A. No.

25 Q. And why not?

1 A. Because he was just coming out to talk to me. He was
2 asking questions. It wasn't nothing officially. He had,
3 you know...

4 Q. Well, when you say nothing officially, I don't know
5 what you mean.

6 A. He didn't -- he was just coming out to ask -- he was
7 just asking questions about what, what went on during the
8 trial. It wasn't...

9 Q. Well, did they ask you to sign an affidavit that day?

10 A. No.

11 Q. Did they ask you to sign an affidavit any time right
12 after that?

13 A. No.

14 Q. So, they never asked you to sign an affidavit until
15 this week?

16 A. No. I was supposed to meet with them a couple
17 occasions, but I had -- I was having my own personal
18 issues. I couldn't come.

19 Q. I'm sorry.

20 A. No problem.

21 Q. So, you told them at this first meeting back then
22 August or first of September that y'all were going to hear
23 some things that will throw you off. Don't let it distract
24 or you mislead. Is that what you said?

25 A. That's -- I didn't say it. That's what the clerk of

1 courts told us.

2 Q. Yeah. I'm saying that's what ---

3 A. Oh, yeah.

4 Q. --- you said to them.

5 A. Uh-huh.

6 Q. I'm sorry, and where did that take place?

7 A. She would always stand, like, on the outside of the
8 jury door -- I mean, room. Like, in between. Like, on the
9 outside. She would never really come inside the jury room.

10 Q. So, you were in -- there were two rooms, right?

11 A. Yeah.

12 Q. Okay. One room and then the other room separated it,
13 correct?

14 A. Right.

15 Q. And you couldn't hear people talk in the other room,
16 could you?

17 A. No. That's why when she came, everybody in one room.

18 Q. Okay. So, this comment you said that she made, did
19 she bring everybody out in the hallway?

20 A. Some people was in the hallway. That's why I said she
21 was standing -- she was standing right at the head of the
22 door.

23 Q. Standing in the head of the door?

24 A. Right.

25 Q. Was Mr. Bill there, your bailiff?

1 A. Yeah. He would -- he would be standing in the
2 hallway.

3 Q. He's all the way out there, right?

4 A. Right.

5 Q. And then she said in front of everybody the defense is
6 about to do their side. They're going to say things that
7 will confuse you. Don't let them confuse you or convince
8 you or throw you off. She said that to everybody?

9 A. She said that to everybody.

10 Q. So, everybody could have heard?

11 A. Everybody could hear it.

12 Q. And you said you were all in the same jury room.

13 A. Yeah. We would all be in the same -- when she came,
14 she would stand in the front of the door with the jury room
15 that I was in.

16 Q. Right.

17 A. And everybody would come over. They would let us know
18 before she came. Like, she -- they would let us know,
19 like, after lunch, she's going to come talk to y'all, and
20 we all would gather together.

21 Q. So, would you go from the two rooms into one room?

22 A. Some would be standing out -- she was standing in
23 front of the door. Some would be standing around her
24 outside the door, and some would be in the room, but it was
25 clear enough for us to hear and -- hear and see her -- see

1 her.

2 Q. And I'm just -- Mr. Harpootlian led you and:

3 Ms. Hill made the above statement warning that
4 the defense would try to confuse us in the
5 presence of all of the jurors as we had assembled
6 in the same jury room.

7 A. We was all in the same jury room. She would be on --
8 outside the door, and we would be in the room, and some
9 would be standing beside her. We was all -- always all
10 together when she came.

11 Q. And did you think that was usual?

12 A. No, because, I mean, she -- I guess she didn't want to
13 walk back and forth from room to room.

14 Q. No. The fact of what she said, did you think that was
15 unusual?

16 A. Yeah, I did.

17 Q. And did you get emotional and see his face, they want
18 people to see your face?

19 A. Because, you know, some of the -- some of the jurors
20 was getting emotional, and I guess she noticed it because
21 she, she commented on it.

22 Q. And you said you did not -- the statement he read, she
23 informed you that the defendant was going to testify but
24 don't know recall exactly what was said ---

25 A. After, yeah. I can't.

1 Q. When was that?

2 A. That, that was -- I think he came in the afternoon,
3 like at 2:30, 3. So, that was before he testified, I
4 think.

5 Q. And where was that?

6 A. Oh, in the jury room where we were all -- like I said,
7 we would all meet.

8 Q. And I guess what I'm saying is you're in two different
9 rooms for a while, right? When y'all get up there, you
10 split, don't you?

11 A. Yeah.

12 Q. The people that talk loud in one room, the others in
13 the other one pretty much?

14 A. No. It's not like that. It was just they split it
15 off. They just asked us what room we want to go to.

16 Q. So, when you were fixing to come back to the jury room
17 -- or, excuse me, to the -- to the box.

18 A. Uh-huh.

19 Q. You're telling us you'd all go into one jury room
20 together?

21 A. Only when she came to speak to us.

22 Q. When Mr. Harpootlian asked you about, I believe,
23 number 7 on the affidavit -- when did you sign this
24 affidavit?

25 A. This morning.

1 Q. And when's the last time you had talked with Mr.
2 Harpootlian or Holli or ---

3 A. Oh, I haven't talked to him since he came to my house.

4 Q. Or any of them before today?

5 A. I haven't talked to him since he came to my house.

6 Q. Talk to anybody else involved in this case before
7 today since then?

8 A. No. He was talking to my lawyer.

9 Q. Okay, and who was that?

10 A. Sean Wilson.

11 Q. Okay, and when had Sean Wilson talked to you?

12 A. He's been my lawyer.

13 Q. Since when?

14 A. Since 2021.

15 Q. Okay. When Mr. Wilson talked to you about this case
16 and what you told Mr. Harpootlian prior to ---

17 THE COURT: All right, they apparently don't object to
18 this, but I am very uncomfortable with your asking what her
19 lawyer told her.

20 MR. MEADORS: And I wasn't going to go into content.
21 I was just looking for timing.

22 THE COURT: Well, she's told you a couple of times
23 that he was her lawyer since 2021.

24 Q. Was he your lawyer for this?

25 A. What you mean for this?

1 Q. For, like, being a juror.

2 A. For being a juror?

3 Q. Yes, ma'am.

4 A. I didn't have a -- he was always my lawyer.

5 Q. You didn't hire him for this?

6 A. No, I didn't hire him for this.

7 Q. But he had talked to Mr. Harpootlian about your
8 affidavit and your testimony today, hadn't he? Is that a
9 yes?

10 A. Yes. He was looking over the paperwork. He was
11 looking -- he was looking out for me because he is my
12 attorney.

13 Q. And when was he looking over the paperwork?

14 A. Oh, I don't -- I couldn't -- I guess ever since
15 September or October. I don't -- I don't -- I wasn't
16 really keeping up with it -- with it, to be honest.

17 Q. So, do you know if he's talked with Mr. Harpootlian
18 this week?

19 A. Yeah, he's talked to him today.

20 Q. Talked to him today?

21 A. We was together.

22 Q. Who was together?

23 A. Me and my lawyer.

24 Q. And Mr. Harpootlian?

25 A. Yes, when I went to go sign the affidavit.

1 Q. Where did you sign it?

2 A. At his office.

3 Q. At whose office?

4 A. Mr. Harpootlian office.

5 MR. HARPOOTLIAN: Your Honor, I would ---

6 A. I was supposed to ---

7 MR. HARPOOTLIAN: I would -- I would object.

8 A. Okay.

9 MR. HARPOOTLIAN: This is meandering. I mean, there's
10 no jury here. It's you.

11 MR. MEADORS: I can't help it.

12 MR. HARPOOTLIAN: And I don't know what ---

13 THE COURT: Well, how about helping a little bit, Mr.
14 Meadors. I think we've got all the information ---

15 MR. MEADORS: I'm not trying to...

16 THE COURT: All right. I think it's time to move on.

17 MR. HARPOOTLIAN: I hope so. Thank you.

18 THE COURT: Yes.

19 Q. And that's the last question Mr. Harpootlian asked you
20 about this affidavit, isn't it?

21 A. What was the last question?

22 Q. During the visit to Moselle, Juror -- won't say the
23 number, whatever the letter is. It doesn't matter. You
24 saw a juror:

25 And I walked the scene together. Then the juror

1 began talking with the clerk of court. I could
2 tell you -- could tell they were talking, but I
3 couldn't hear what they said between them.

4 That's the last question he asked you.

5 A. Correct.

6 Q. And you have no idea what that conversation was about,
7 do you?

8 A. No, I don't.

9 Q. Now the next, number 8, he didn't ask you about was:

10 I also overheard discussions in the jury room
11 that Ms. Hill drove a juror home. I believe it
12 was the juror whose nickname was Boston.

13 Now, he didn't ask you that a minute ago, did he?

14 A. No, but ---

15 Q. Just yes or no.

16 A. No.

17 Q. And you didn't include that in the first conversation
18 you had with them back in August and September in this
19 affidavit Ms. Holli did, did you? You didn't tell them
20 about that.

21 A. I don't -- I can't remember.

22 Q. Have you seen the affidavit Ms. Holli did for you back
23 in September 1st ---

24 MR. HARPOOTLIAN: Objection. Ms. Holli did not do an
25 affidavit. Ms. Holli ---

1 MR. MEADORS: She didn't ---

2 MR. HARPOOTLIAN: --- did her affidavit, her notes of
3 what this young lady said to her, and what she included and
4 didn't include was based on what Ms. Holli thought was
5 relevant at the time, but she can't be cross-examined.

6 THE COURT: All right, yes. That is not in evidence,
7 Mr. Meadors.

8 MR. MEADORS: We'd, we'd offer it, Your Honor.

9 THE COURT: Sir?

10 MR. MEADORS: I'd offer it just in ---

11 THE COURT: Well, how is thing going to be
12 authenticated?

13 MR. HARPOOTLIAN: Well, Your Honor, even more
14 importantly, he can't -- he can't ---

15 THE COURT: Wait a minute. Wait a minute.

16 MR. HARPOOTLIAN: --- question ---

17 THE COURT: Wait a minute.

18 MR. HARPOOTLIAN: I'm sorry. I'm sorry.

19 THE COURT: Several people can't talk at one time.

20 I don't even have an affidavit. Let me see what
21 you're talking about. You talking about the one just
22 offered today?

23 MR. MEADORS: No, ma'am. This is the one Holli did
24 when he first talked to her back in August and she's ---

25 MR. HARPOOTLIAN: And, and, and ---

1 MR. MEADORS: --- referring to that ---

2 MR. HARPOOTLIAN: --- for the record, that's Ms.
3 Miller, okay?

4 MR. MEADORS: I'm sorry.

5 MR. HARPOOTLIAN: Ms. Miller.

6 MR. MEADORS: I'm sorry.

7 THE COURT: This is Ms. Miller's affidavit about what
8 she thinks this juror said?

9 MR. HARPOOTLIAN: Yes.

10 THE COURT: I'm not going to allow this, Mr. Meadors.

11 MR. MEADORS: Okay. Thank you.

12 THE COURT: I don't see a whole lot of difference
13 between this and what's been said in the affidavit that has
14 been offered by Mr. Waters, but I'm not going to allow
15 that.

16 Q. You did not tell them about hearing that Ms. Hill had
17 driven a juror home back when you met with them in
18 September, did you?

19 A. I can't remember.

20 MR. MEADORS: Beg the court's indulgence. I'm sorry.

21 THE COURT: All right.

22 (A PAUSE.)

23 Q. Who was Boston?

24 A. She was a juror on the -- on that trial. I don't know
25 her -- but that was the nickname they gave her. I don't

1 know her first name.

2 Q. And what, if anything, did you know or convey about
3 Boston?

4 A. She was a juror on the case just like everybody else.

5 Q. But anything else?

6 A. Nothing.

7 Q. Ma'am?

8 A. No.

9 Q. So again, Mr. Harpootlian didn't to ask you, but in
10 your -- in the affidavit of today:

11 I also overheard discussions in the jury room
12 that Ms. Hill drove a juror home. I believe it
13 was a juror whose nickname was Boston.

14 Was that something that was added after your lawyer
15 was Mr. -- was with Mr. Harpootlian today?

16 A. I don't know if I added it. I, I -- we talked about
17 it today, but I don't know if I mentioned it in September
18 or not.

19 Q. That's the ---

20 A. But I know ---

21 Q. --- first time you've ever talked about it, wasn't it?

22 MR. HARPOOTLIAN: Your Honor.

23 A. No, it's not.

24 MR. HARPOOTLIAN: There's no reason ---

25 THE COURT: Wait a minute.

1 MR. HARPOOTLIAN: --- to raise ---

2 A. No.

3 THE COURT: Wait.

4 MR. HARPOOTLIAN: Objection.

5 THE COURT: Wait, wait, wait. The first thing is, Mr.
6 Meadors, I'm going to caution you one more time about this.
7 You cannot talk over a witness.

8 MR. MEADORS: I'm sorry.

9 THE COURT: The second thing is you don't need to be
10 marching all back around here. You're talking only to me
11 at the moment, not the jury or anything else.

12 MR. MEADORS: I'm sorry.

13 THE COURT: So, let's slow down.

14 MR. MEADORS: All right.

15 THE COURT: And this is repetitive. The questions
16 have been asked before. If you want to take this tone with
17 her, I don't know exactly what you're trying to accomplish,
18 but ---

19 MR. MEADORS: I'm, I'm not trying to take a tone with
20 her, and I apologize. She knows that, and I'm sorry.

21 THE COURT: Well, you're just talking to me.

22 MR. MEADORS: I'm sorry.

23 THE COURT: This is not some drama thing for the jury.

24 MR. MEADORS: I know. I'm sorry.

25 THE COURT: All right. Well, let's, let's finish this

1 thing up.

2 MR. MEADORS: And, Judge, the only reason I did, it
3 was -- he hadn't asked about it, and it to me is the key
4 issue here. They're trying to say ---

5 THE COURT: Please, Mr. Meadors. Are you lecturing to
6 the witness or to me or what? Please don't do that.

7 Strike that from the record, please.

8 MR. MEADORS: Don't strike. Don't strike it.

9 THE COURT: Let's wind this up.

10 MR. MEADORS: I'm so sorry.

11 THE COURT: Let's wind this up. All right.

12 Q. In number 9 of the affidavit:

13 Before the jury began deliberating, I heard a
14 member of the court staff say deliberations
15 shouldn't take long. I don't remember
16 specifically who made it, but it was made in the
17 presence of the entire jury right after closing
18 arguments in the jury room.

19 A. Correct.

20 Q. Then I think you said something. Judge Newman came to
21 see you afterwards but after the jury went to their room.

22 You were in a separate ---

23 A. No. When we first left out the courtroom, we all went
24 in the same jury room.

25 Q. Okay.

1 A. And then they separated me.

2 Q. And, Ms. 741, I didn't mean to raise my voice.

3 A. Oh, that's okay.

4 Q. I apologize.

5 A. That's fine.

6 Q. But when they started deliberating, were you in a
7 separate room?

8 A. Yeah, when they started deliberating.

9 Q. Okay. So, you had no involvement in the deliberations
10 or verdict of Richard Alexander Murdaugh ---

11 A. No, sir.

12 Q. --- at all, did you?

13 A. No, sir.

14 Q. You didn't get to come back with a verdict, did you?

15 A. No, sir.

16 Q. Have you read Ms. Hill's book?

17 A. No.

18 Q. And I noticed your interview. I did watch it because
19 I think Mr. Radford back there ---

20 MR. MEADORS: Raise your hand kind of, Radford.

21 Q. Came to your place and interviewed you.

22 A. Right.

23 Q. At some point during the trial, I think there was some
24 discussion that somebody might have wanted to do an
25 interview with you?

1 A. Yeah. That's what she said.

2 Q. Okay, and then after the trial, I think there was
3 discussion. Somebody -- since you weren't on the jury,
4 they may not have wanted to interview you. You remember
5 that roughly, telling the officer that?

6 A. Yeah, that's not what she said. She came to me
7 roughly in the middle of trial, and she said I have a few
8 people who would like to interview -- she said I have --
9 she didn't say a few. She said I have a lot of people
10 that's inquiring, interview with you. She said but I'll
11 have to get with you after the trial.

12 But after the trial, she came back in the jury room
13 and she handed -- started handing out cards, and she hand
14 everybody cards but me, and she was, like, I don't have any
15 cards for, for you for interview because nobody wants to
16 speak with you. That's what was said.

17 Q. And did -- I mean, you weren't happy with that, were
18 you?

19 A. Yes, I was.

20 Q. You were happy with that?

21 A. I, I, I don't need to be interviewed.

22 MR. MEADORS: Beg the court's indulgence.

23 (A PAUSE.)

24 MR. MEADORS: Your Honor, to your delight I'm through.

25 Thank you.

1 THE COURT: Mr. Harpootlian.

2 MR. HARPOOTLIAN: Briefly, Your Honor.

3 REDIRECT EXAMINATION BY MR. HARPOOTLIAN:

4 Q. Mr. Meadors just asked you a series of questions I'm
5 not sure I'd heard before. Who approached you during the
6 trial and indicated the media would want to interview you?

7 A. Ms. Hill.

8 Q. Ms. Hill?

9 A. Ms. Hill herself.

10 Q. Just you or all the jurors?

11 A. She -- I -- she -- I was -- we was -- they had -- I
12 think it was the day they had the bomb threat, and we -- I
13 think that was the day, and she approached me.

14 Q. You?

15 A. Me by myself.

16 Q. By yourself, and where were you?

17 A. It -- that's the day in the lunch room when they had
18 the bomb threat. We went to the middle school. I believe
19 that was the day.

20 Q. The middle school, and she came over to you and said
21 what?

22 A. That she had some reporters that was reaching out to
23 her that wanted to speak with me.

24 Q. To you. Not the whole jury. To you. Was there
25 anybody with you at that time?

1 A. No. It was just ---

2 Q. Did she indicate why they wanted to speak with you,
3 just you?

4 A. No.

5 Q. Did she indicate what reporter?

6 A. No.

7 Q. And did she ever talk to you about doing interviews
8 with the media after that?

9 A. No.

10 Q. But you indicated she brought some cards at some
11 point?

12 A. She brought cards in to hand to the jurors.

13 Q. Before?

14 A. After.

15 Q. After?

16 A. The verdict was read.

17 Q. Cards of media people?

18 A. Yes, sir.

19 Q. Did she tell you she was writing a book?

20 A. No.

21 Q. Did she indicate to you why it might be good for her
22 if you did media interviews?

23 A. No.

24 Q. But she had a conversation with you in the lunchroom
25 of the middle school ---

1 A. I believe it was the lunch room. I think it was the
2 day of the bomb threat.

3 Q. The day of the bomb threat.

4 A. But I'm 100 percent sure she came to me and she told
5 me that in the middle of the trial.

6 Q. Was there a bailiff with her or just her?

7 A. No. It was just her.

8 Q. Pulled you over. Said hey, I can -- I can make you
9 famous. I can put you on TV.

10 MR. MEADORS: Objection. That's not ---

11 A. She said she had media that wanted to talk to me.
12 That's what she said.

13 MR. HARPOOTLIAN: I hyperbolize. I apologize, Your
14 Honor.

15 THE COURT: Yes, sir.

16 MR. HARPOOTLIAN: That's all I have.

17 THE COURT: All right, no further questions, Mr.
18 Harpootlian?

19 MR. HARPOOTLIAN: No, Your Honor.

20 THE COURT: Very good.

21 Thank you very much, ma'am.

22 WITNESS: You're welcome.

23 THE COURT: You are excused.

24 WITNESS: Thank you.

25 (THE WITNESS EXITS THE STAND.)

1 THE COURT: All right, Mr. Harpootlian, is that it?

2 MR. HARPOOTLIAN: I just want to put one matter on the
3 record, Your Honor, and that is -- and that is it.

4 THE COURT: All right. All right, sir.

5 (A PAUSE.)

6 MR. HARPOOTLIAN: Your Honor, earlier today you
7 received a very short affidavit from Juror Z. We'd like to
8 proffer that and make it part of the record.

9 THE COURT: Right. I did not admit it, but I'll
10 accept a written proffer, and if you would give the thing
11 to me. I saw it on the screen on my law clerk's computer,
12 but I don't have a printed out copy.

13 MR. HARPOOTLIAN: We don't either, but would you allow
14 us to submit it?

15 THE COURT: Well, I will allow before I close the
16 record with Ms. Harris, if you could get it to us. When
17 can you get it to us?

18 MR. HARPOOTLIAN: We can email it this afternoon.

19 THE COURT: Very well. How about this? How about
20 email it to Mr. Waters, to me, to Ms. Diaz, and to Ms.
21 Harris, the court reporter, and I will say now it is
22 offered as a proffer and I will receive it as a proffer. I
23 have not admitted it into evidence.

24 MR. HARPOOTLIAN: Yes, ma'am.

25 THE COURT: All right.

1 (A PAUSE.)

2 MR. HARPOOTLIAN: And, Your Honor, we referred to
3 earlier on a email to the Japanese television folks. I do
4 have copies of that, would like to make that part of the
5 record.

6 THE COURT: All, hand it up to me and let me see, and
7 also, of course, to Mr. Waters. I've got two of these, Mr.
8 Harpootlian. I'll give you one back.

9 (A PAUSE.)

10 MR. HARPOOTLIAN: And, Your Honor, for the record, the
11 hearing before Judge Newman to seal the body-cam videos was
12 on May 26, 2023. This email is in July just to give you
13 the context.

14 THE COURT: All right, this is being offered as a
15 after-the-fact email to Rebecca Hill and her replies
16 garnered from the emails that were released by Colleton
17 County at a certain point.

18 MR. HARPOOTLIAN: Yes, Your Honor.

19 THE COURT: And it addresses the issue I raised with
20 Ms. Hill relative to the security of the sealed records.

21 MR. HARPOOTLIAN: Exactly, Your Honor.

22 THE COURT: All right. I will admit it.

23 Mr. Waters.

24 MR. WATERS: As to this specific exhibit, Your Honor?

25 THE COURT: Yes.

1 MR. WATERS: Your Honor, I mean, we don't have any
2 objection other than the ones we've raised just during the
3 testimony.

4 THE COURT: Yes.

5 MR. WATERS: But I have no further objections.

6 THE COURT: All right.

7 MR. HARPOOTLIAN: And, Your Honor, that's all we would
8 have.

9 THE COURT: All right.

10 (A PAUSE.)

11 THE COURT: All right, your proffer is your Exhibit 1,
12 Mr. Harpootlian, and this which I had is your Exhibit 2.

13 MR. HARPOOTLIAN: Thank you, Your Honor.

14 THE COURT: All right. All right, now we proceed to
15 closing. Are you prepared?

16 MR. WATERS: Yes, ma'am.

17 THE COURT: Very good. Mr. Waters.

18 MR. WATERS: Thank you, Your Honor. Just to go back
19 and reiterate as to the standard, and, and ultimately
20 we've, of course, argued that the defendant has the burden.
21 We've also discussed that the standard for Your Honor, of
22 course, is, first of all, was there any misconduct that
23 occurred, and regardless of that, whether or not there was
24 any effect on the verdict. And the standard, as has been
25 expressed in multiple cases, is whether the verdict is

1 solely the product of honest deliberation or the product of
2 outside influence. And that inquiry fundamentally, as the
3 Court recognized from the very beginning, focuses on the
4 jurors themselves because it doesn't necessarily matter
5 what was said as much or what was intended or what was
6 inadvertent, even assuming that those existed. What
7 matters is, is what the jurors heard, what they perceived,
8 and whether or not it had any sort of effect on the
9 verdict. And Your Honor went through that inquiry with
10 these jurors.

11 Eleven of those jurors were clear and unequivocal that
12 there was no effect on their verdict, and also clear and
13 unequivocal that nothing was said that could any way be
14 inferred as any sort of attempt to influence them. And I
15 think that's very important, Your Honor, because, you know,
16 there can be sometimes behind the doors, as we've talked
17 about, I think some of the cases recognize this, that some
18 conversations can go on and things like that can happen.
19 But ultimately -- and while -- I think there were some
20 cases cited in some of the various South Carolina
21 decisions, you know, that it's not -- that it's unrealistic
22 and not surprising to think sometimes things like that,
23 that can happen, and an untoward comment or something was
24 said. But that, you know, that was in *Aldret*, Your Honor,
25 a 1999 Supreme Court case.

1 But the mere fact that something like that may be
2 stated, that could be stated in a neutral reason is not
3 enough to undermine the verdict because the inquiry
4 ultimately boils down to what was it that those jurors
5 heard. And in the end, though, did they listen to the
6 instructions from the trial judge? Did they come to a fair
7 and honest verdict? And, Your Honor, the evidence here is
8 overwhelming, I would say, from the people that matter, and
9 that's those jurors, and that is there was no effect on the
10 jurors.

11 And you saw every single one of them. Every single
12 one of them very clearly and strongly looked you in the
13 eye, all eleven of them. I'll get to the twelfth one in a
14 second, but looked you in the eye and said no, that didn't
15 happen. No, I didn't hear anything like that. No, there
16 was no effect on our verdict. No, this was our verdict,
17 and it was based solely -- which was Your Honor's question
18 -- solely on the evidence and the law and the testimony.
19 And I think that that carries the day.

20 We have one juror, and I want to make sure because I'm
21 about to say a number, and I don't want to do that. Let me
22 go back to ---

23 THE COURT: Z.

24 MR. WATERS: --- Juror Z and let's look at Juror Z
25 because Juror Z also said that, yes, I said that this was

1 my verdict. I was polled and said this was my verdict.
2 Juror Z also said that my verdict was solely based on the
3 evidence and the law and the testimony at trial. Answered
4 question number 2 yes, absolutely yes, but then goes on
5 after that to say she heard some communications from the
6 clerk and then says, well, it had an effect on my verdict
7 even after she had already answered question number 2 when
8 she said her verdict was based solely on the evidence and
9 the law and the testimony at trial.

10 And beyond that, then, Your Honor, I think that it's
11 very telling that the affidavit that was submitted from
12 this particular juror, and it's, it's -- we've been
13 pointing this out from the beginning because it's very
14 crucial and very telling because despite the things that
15 she alleges that happened, even though the other jurors say
16 it didn't, despite the things she alleges that happened,
17 she says that she voted guilty because she felt pressure
18 from other jurors, not that her verdict was in any way
19 affected from some supposed external influence. In the
20 affidavit that was filed with the defense motion, from day
21 one that is what she says, that she felt pressure from
22 other jurors.

23 And, Your Honor, we've cited the cases over and over
24 again, that the internal mechanics of the jury room, the
25 fact that one juror feels pressured by others, as long as

1 there's not violence or things that go beyond the pale,
2 that is not a basis for undermining a verdict. That is
3 part of the deliberative process, and it's expected, and
4 it's occurs.

5 But I think it's very telling that we have those
6 conflicting answers. And, Your Honor, without waiving any
7 objection to the latest affidavit that we were just
8 discussing from this juror, I think that's very telling
9 because now we have answer number 3 as it relates to this
10 particular juror. And, of course, it's clearly
11 manufactured and rehabilitated to recognize after the fact
12 she, of course, is -- this juror is represented by Joe
13 McCulloch, and ultimately we've got now a third version of
14 events from this very juror.

15 So, we have this juror who's given answers all over
16 the place that are inconsistent with eleven other jurors
17 who were very strong and unequivocal that, yes, this was
18 our verdict. It was based solely on the evidence, the law,
19 and the testimony, that there were no communications from
20 Becky Hill that influenced that verdict. And I think
21 ultimately when you look at the case law, in the end it's
22 up to Your Honor to make that ultimate determination and
23 looking at all that law together.

24 We cited a number -- a number of decisions, including,
25 as we discussed, the questions to be had. I sent an email

1 where we set out some, some questions that it's not
2 uncommon perhaps for jurors, for a juror to have a second
3 thought. But the law is very clear that it does not
4 recognize that because what that would do would be to
5 consistently and constantly put every verdict that occurs
6 in any courtroom in this state or in the nation at risk.

7 Jurors don't have to vote in perpetuity; they vote on
8 one day and one day only. And here, Your Honor, the
9 evidence is overwhelming that those jurors' verdict was the
10 product of honest deliberation, and the only bit of
11 contrary evidence to that effect is from a juror who,
12 frankly, not only said that it was purely the result of
13 honest deliberation but then has answers all over the place.
14 And, Your Honor, I would say that the other eleven jurors
15 are credible. They were strong. They were clear with Your
16 Honor, and I think that ultimately that carries the day

17 Now, we've had testimony from other people since the
18 jurors were here. We've had testimony obviously from Ms.
19 Hill. We've had testimony from Ms. Rhonda, and we've had
20 testimony from this alternate juror. But again, none of
21 that testimony at all goes to what is the ultimate test for
22 Your Honor, and that is whether or not this verdict was the
23 product of honest deliberation. And on that, again the
24 evidence is overwhelming and strong and clear that it was
25 the product of honest deliberation.

1 It's very interesting as we look at some of the
2 testimony from the other witnesses, and obviously we have
3 Ms. Becky and, as Your Honor has pointed out, we're not
4 here to go through some of the issues that have been
5 alleged or percolating out there. That's not the point of
6 this proceeding here today, but Ms. Becky is a court
7 reporter and then became a clerk and was clear to you that
8 she never made any comment in an attempt to sway the jury
9 one way or the other.

10 We have Ms. Rhonda, and Ms. Rhonda came in and
11 testified, but I would submit to Your Honor that this is
12 kind of a red hearing because what Ms. Rhonda described
13 were conversations that she herself admitted are just the
14 kind of conversations that go on, and that's the reality of
15 it. The conversations that go on among the trial team when
16 we're not in open court where we're discussing things, the
17 kind of conversations that go on among court staff behind
18 the doors, those types of conversations go on. But that
19 does not mean, nor does that necessarily indicate, that
20 somebody's not going to come out here and do their job
21 fairly, and understand the distinction between influencing
22 a jury and not doing that.

23 And one thing that I think is very important is that
24 Ms. Rhonda was at that trial more than Ms. Becky was, and
25 she was very clear. And I probably was as repetitive as

1 anyone here today in asking that question over and over
2 again because I didn't want that point to be lost. And Ms.
3 Rhonda said I was there more than anyone else, and I never
4 saw anything or observed anything or had anything happen
5 that would cause me independently to go to Judge Newman
6 because that's what I would have done and go to Judge
7 Newman and say something is not right about this. This
8 needs to be fixed. Something is going on that's improper.

9 And I think that that is an extremely crucial fact
10 because Ms. Rhonda admitted and said of course she would.
11 That if something had happened that the judge needed to
12 know about, she would have been the first to do it, and it
13 never happened, and she was here more than Ms. Becky was.
14 It never happened.

15 When we look at the balance of those facts, when we
16 have the clerk of court come in and testify that, that
17 maybe I did this or maybe I did that, maybe I plagiarized
18 the book, a portion of it, maybe I did this, maybe I wrote
19 things in there that were based on community knowledge or
20 newspapers or poetic license or whatever you want to call
21 it, I, I don't care about the book, and I would submit that
22 Your Honor doesn't need to care about the book either
23 because the book and what happened with the book afterwards
24 is not what is relevant to the inquiry. But she was clear
25 that she did not have any attempt to influence that jury.

1 She was clear about that. And Ms. Rhonda was clear that
2 she was not aware of anything like that either. And what
3 does that do but corroborate the most important witnesses
4 here.

5 The defense, I think, in one of their letters tried to
6 say that Ms. Becky was the State's star witness, and that's
7 not what the inquiry is about. It's not what this inquiry
8 is about at all because as I've said from day one, if there
9 were not facts to be litigated, if we had not done an
10 investigation and had those eleven jurors say that didn't
11 happen, there was no effect on our verdict, this was the
12 product of honest deliberations, we would be the first ones
13 here standing to say that.

14 But what we do know, Your Honor, is that what Ms.
15 Becky said and ultimately what Ms. Rhonda said corroborates
16 who are the true, if you want to say -- and I'm only using
17 this term because the defense accused us of Ms. Becky being
18 our star witness. There are no star witnesses here. This
19 isn't about stars. But what Ms. Becky and Ms. Rhonda do is
20 corroborate who are the most important witnesses, and that
21 are those jurors. And you have eleven of them strong as a
22 rock saying this verdict was not influenced, nobody tried
23 to influence, and regardless, it was a product of our
24 honest deliberation. And you had one juror who said that,
25 too, but then has answers that are all over the place. And

1 if you go back to her original statement, what she says is
2 not external influence anyway. It's not sufficient under
3 the law.

4 So, I think that the proof here is overwhelming; I
5 think the proof here corroborates what those jurors say. I
6 think the only juror that we have to contend with, the
7 testimony is compromised, and I'm not saying that that
8 person is in here maliciously lying. I just think that
9 this process is a lot.

10 It's clear that if there was any attempt to influence
11 this jury, those jurors who sat in that box, every single
12 one of them, you saw them and we saw them for six weeks.
13 They are conscientious; they take their obligation
14 seriously. They were not here to reward friends or punish
15 enemies. They were here to do their job appropriately and
16 fairly. You saw that in their eyes. You saw that in their
17 mannerisms. You saw that in their demeanor, and they were
18 strong and clear that this verdict was fair. Your Honor,
19 we would submit that the motion for new trial be denied.

20 THE COURT: Mr. Harpootlian.

21 MR. HARPOOTLIAN: Mr. Griffin will be arguing, Your
22 Honor.

23 THE COURT: All right.

24 MR. GRIFFIN: Is it okay if I stand here, Your Honor?

25 THE COURT: Of course.

1 MR. GRIFFIN: That way, I won't be interrupted by Mr.
2 Harpootlian trying to make my points.

3 Your Honor, I want to first start with *State v. Green*
4 because I understand that that is the guidance. That's
5 what we're following here, and in reading, you know,
6 excerpts from the *State v. Green*, first it is absolutely
7 clear in *State v. Green* that we find ourselves -- and the
8 issue is whether there is a defendant's right to a fair and
9 impartial jury under the Sixth Amendment has been violated.
10 Reading from the opinion, it says in the Sixth Amendment
11 context -- this is the Supreme Court of the United States
12 has held that, quote:

13 Any private communication, contact, or tampering
14 with a jury during a trial about the matter
15 pending before the jury is deemed presumptively
16 prejudicial.

17 Now, *Green* goes on to say that:

18 We are not going to categorically apply the
19 presumption whenever there is a contact with a
20 juror.

21 But the question is, is it prejudicial, not whether
22 the verdict would have been different. It is, is it
23 prejudicial. And, and I will -- I will keep reading. The
24 Court says: We're not persuaded that the *Remmer* presumption
25 of prejudice ---

1 We're talking about prejudice, not is the verdict
2 different. Was there prejudice, was this tainted process,
3 was it prejudice to the defendant? Was the process
4 prejudicial to the defendant because of extraneous
5 communications? Not whether the verdict would have been
6 different but whether there's prejudice involved in the
7 process of the trial.

8 The Court goes on to say:

9 Our unwillingness to categorically apply the
10 *Remmer* presumption of prejudice stems from our
11 view that not every inappropriate comment by a
12 bailiff to a juror rises to the level of
13 constitutional error.

14 Goes on to say:

15 The attempted bribery of the juror in *Rimber* --
16 *Remmer*, conduct which goes to the heart of the
17 merits of the case, is a far cry from the
18 circumstances presented in this case. The
19 bailiff's actions here, though improper, did not
20 touch the merits but only dealt with the
21 procedural question of how the judge might handle
22 a jury impasse that apparently never
23 materialized.

24 The Court says:

25 While we decline to adopt the *Remmer* presumption

1 of prejudice in every instance of inappropriate
2 bailiff communication to a juror, though occasion
3 of this case presents an opportunity for our
4 clerks of court and circuit judges to ensure that
5 all bailiffs are properly trained.

6 Now, only thing that *Green* did was reject the
7 presumption of prejudice in every case. And, Your Honor,
8 I'm not going to -- I just want to preserve for the record
9 that our position is, is that the comments that you heard
10 in this case go to the merits, go to the heart of the
11 defense. And if you find that those comments were made,
12 and I -- and I'm going to establish for the record we
13 clearly made we clearly have proven that -- that then we do
14 get the *Remmer* presumption. We do get the *Remmer*
15 presumption if we have proven these comments were made.

16 But, but I'm going to argue that we proved prejudice
17 also in this case. So, to start with, let's go to the
18 evidence that was presented since Friday.

19 And, and, Your Honor, we have -- we have twelve
20 deliberating jurors in this case. What you've heard, three
21 of the twelve have testified under oath that they heard Ms.
22 Hill make comments about the case. Whether it's, you know,
23 how they cat -- categorize it as merits or not, but Juror X
24 on Friday, Juror X on Friday acknowledged that Ms. Hill
25 made a comment about Alex was going to testify, that it was

1 going to be epic or some words like that, and that
2 defendants don't normally testify. That -- that's what
3 Juror X said on Friday.

4 Today -- so, that's one. Says Ms. Hill made a comment
5 about Alex's testimony, how it was going to be a big deal,
6 and defendants don't normally testify.

7 Juror Z today says that -- first she says Ms. Hill
8 said to watch his actions, to watch him closely, and then
9 she said there are other things that he said I, I don't
10 remember. And then we were allowed to show her, and when
11 Your Honor asked her questions about her affidavit, and she
12 says -- confirmed what was in her affidavit, that Rebecca
13 Hill told the jury not to be fooled by evidence presented
14 by Mr. Murdaugh's attorneys, which I understood to mean
15 that Mr. Murdaugh would be -- would lie when he testified.
16 She also acknowledged this as a truthful statement that she
17 instructed the jury to, quote, watch him closely, close
18 quote, immediately before he testified, including look at
19 his actions and look at his movement, which I understand to
20 mean he was guilty.

21 And she also said and confirmed that, that Ms. Hill
22 said when they began deliberations that this, quote, this
23 shouldn't take us long, close quote, and then if we
24 deliberated past 11 PM, that we'd be taken to a hotel.
25 Those statements go to the merits; those statements go to

1 the heart of the defense. Those statements go to what Mr.
2 Murdaugh -- his credibility. So, that's two deliberating
3 jurors down.

4 The third deliberating juror and who testified today
5 is Juror P, and, and he says -- you asked Juror P did Ms.
6 Hill make any comments about the case, and he says yes.
7 She said the day that Alex was taking the stand -- excuse
8 me, Juror P is a he, but he, he is saying that she, Ms.
9 Hill, said the day that Alex was taking the stand that she,
10 Ms. Hill, made the comment about watch his body language.
11 That's all I recall.

12 So, three of the twelve deliberating jurors heard Ms.
13 Hill speak about Alex Murdaugh's testimony, three of the
14 twelve. And then -- and then we get the alternate juror
15 came in and basically corroborated what those three of the
16 twelve heard. And she had additional things that she had
17 heard, but she's corroborated what those three of the
18 twelve heard.

19 And then you've got Ms. Hill who gets on the stand and
20 denies it all. And, and, Your Honor, I couldn't agree with
21 you more that you're able to judge the credibility of
22 witnesses. And, and on this record, there's no way to find
23 Ms. Hill credible. There's no way to credit her statements
24 that she did not make these statements about his testimony.
25 I mean, she crossed herself up as Your Honor's questioning

1 her about the transcription involving the egg lady and how
2 the egg lady learned that, that there's some Facebook post
3 that was allegedly attributed to her husband. There's no
4 way the egg lady would have known that unless Ms. Hill told
5 her, and that pretty much came out there. So, you know,
6 and I know this is not a jury argument, but if someone
7 misrepresents a fact to you once, I mean, I don't think you
8 should go back and credit anything beyond that.

9 What, what we hear from Ms. McElveen is that she heard
10 these almost identical statements from Ms. Hill that Ms.
11 Hill told -- that three of the twelve deliberating jurors
12 heard and, and the fourth alternate heard, that Ms.
13 McElveen heard her make very similar statements about the
14 defense's case, about Mr. Murdaugh's testimony. So, you
15 got to put Ms. McElveen's testimony in, in our category.

16 And Ms. Hill gets up there and says never drove a
17 juror home. Ms. McElveen's got no dog in this fight, and
18 she says she goes to court one day. She hears that Ms.
19 Hill took a juror home the night before and went and talked
20 to her and said you can't do that. Ms. Hill said I didn't
21 talk to her about the case. Well, she gets on the stand
22 under oath here and tells you I never took a juror home. I
23 mean, just totally inconsistent. And, and, and for her to
24 say I, I never made these statements, you know, she tried
25 -- I mean, she kind of gave herself a little wiggle room at

1 the end. Well, when they were lining up, I may have said
2 he's going to testify today or something. But these jurors
3 heard information, and the question under *Green* and *Remmer*,
4 was it prejudicial?

5 Now, what we've got from Juror Z today, the question
6 was did these comments influence your verdict, and Juror Z
7 says yes. Then you asked how, and Juror C -- Z says to me,
8 it felt like she made it seem like he was already guilty.
9 Then you said did it affect your finding of guilt in this
10 case? And, and the answer was yes. And, and so that's
11 prejudice, Your Honor. That is prejudice from one of the
12 twelve deliberating jurors: was your verdict influenced by
13 what Ms. Hill said.

14 And good grief, how could it not be? How could it not
15 be? And, and, and to ask all these other jurors who heard
16 the same thing, was there influence, is really an
17 impossible task because you don't know what's influencing a
18 jury. And, frankly, that's why the *Remmer* presumption is
19 there, but, but let's -- but, but let's try to sort this
20 out.

21 And, and, Your Honor, I think it was -- it was a *State*
22 *v. Kelly* case where the -- where the deputies went out and
23 were investigating the jurors' beliefs on the death penalty
24 and, and there was really no testimony about did that
25 affect your verdict, but it was so -- it was just so wrong.

1 The conduct was so wrong that the Supreme Court says that's
2 prejudicial and we're granting a new trial.

3 I mean, this is prejudice, and this has been proven.
4 I mean, Ms. Hill is not credible. Ms. Hill is not
5 credible, and she's talking about her book, talking about
6 taking literary license to lie. Literary, literary license
7 to lie is what she -- that's what she thinks a literary
8 license is. So, her, her testimony should not be credited.

9 We have proven, we have met our burden of proving that
10 there was extraneous contact with these jurors. Three of
11 the twelve deliberating jurors have testified to that. One
12 of the twelve says it influenced my verdict. How is that
13 not prejudice, and that's all we have to prove. We
14 believe, for the record, there is a presumption that they
15 have to overcome, but we have proved prejudice and, Your
16 Honor, we respectfully request that a new trial should be
17 granted based on the record developed today. Thank you.

18 THE COURT: All right, the arguments are closed. I
19 will take until 5 of the hour to examine my notes, and then
20 I will come and make a ruling from the bench on this
21 matter.

22 Court will be at ease.

23 (OFF THE RECORD.)

24 (WRITTEN PROFFER MARKED INTO EVIDENCE AS DEFENDANT'S
25 EXHIBIT NUMBER 1.)

1 (EMAILS MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
2 NUMBER 2.)

3 RULING OF THE COURT:

4 THE COURT: Please be seated.

5 In the matter of the State of South Carolina against
6 Richard Alexander Murdaugh, 2022-GS-15-00592, 593, 594, and
7 595, the following constitutes my ruling on this matter
8 from the bench. This order will be supplemented, as I will
9 explain, after proposed formal orders are received from
10 each side in this matter.

11 This case is unique in my twenty years of experience
12 as a lawyer and my thirty-five years of experience as an
13 active justice of the Supreme Court and a senior active
14 trial and appellate judge. Usually matters involving
15 possible improper contact with or conduct of a juror arise
16 during or shortly after the trial. The judge then puts the
17 affected juror or jurors under oath, conducts an
18 examination, and rules on the request for a new trial or a
19 mistrial.

20 In this case, I was appointed almost nine months after
21 the trial to replace the trial judge, who was recused. It
22 is now almost ten months after the verdict was rendered and
23 sentence imposed in this matter. It is now on appeal to
24 the Court of Appeals.

25 Several months after the appeal was filed, defendant

1 moved that his appeal be suspended and this matter be
2 remanded to the trial court to consider his motion for a
3 new trial on a charge that the clerk of court for Colleton
4 County tampered with the jury by expressing her opinion to
5 the jurors about what their verdict should be and about the
6 credibility of the defendant, who had elected to take the
7 stand and testify on his own behalf.

8 Since this matter has been remanded to me, I have set
9 the matter for a pretrial and a final hearing, conducted a
10 telephonic status conference with the attorneys for the
11 parties on December 21, 2023. I have received briefs from
12 the parties. I conducted a pretrial proceeding on January
13 16, 2024, in which I invited briefs and arguments by the
14 parties, and by the attorneys for certain of the jurors,
15 and for the clerk of court, Rebecca Hill.

16 On Friday, January the 26, 2024, I conducted a hearing
17 on this matter in which I took testimony from one of the
18 jurors, the conduct of -- the examination conducted solely
19 by me. I received further argument from the attorneys for
20 the State and for the defendant.

21 Today, January the 29, 2024, I have taken sworn
22 testimony from the remaining eleven jurors who rendered a
23 verdict in this case. This examination was conducted
24 solely by me. I have found no case that provides otherwise
25 in the many cases I have read on the subject of a motion

1 for a new trial on the basis of after-discovered evidence
2 of jury tampering or misconduct.

3 I have also received sworn testimony from the clerk of
4 court Rebecca Hill. Direct examination was conducted by
5 Deputy Attorney General Creighton Waters; cross-examination
6 was conducted by defendant's attorney Richard Harpootlian.
7 I have also propounded questions myself to the clerk of
8 court.

9 I also received testimony from the clerk of court for
10 Barnwell County, Rhonda McElveen, who attended most of the
11 trial and assisted the clerk of court for Colleton County.
12 I've also received testimony from the remaining alternate
13 juror who was, when the matter was deliberated, dismissed
14 from further service.

15 The following is my ruling on the defendant's motion.
16 The standard of proof. The State contends that in order to
17 prevail, the defendant must show, one, that the clerk of
18 court made an improper comment or propounded an improper
19 question to the member of the jury, to a member of the jury
20 who rendered the verdict. Two, defendant must further show
21 that Ms. Hill's improper comment or question actually
22 influenced the juror's verdict, citing *State v. Green*,
23 *State v. Aldret*, and other opinions of our Supreme Court
24 and other authorities.

25 Defendant contends that he must show only that an

1 improper question or comment was propounded to any juror by
2 Clerk of Court Hill. If so proved, the defendant contends
3 that the motion for the new trial must be granted.

4 Defendant relies on *United States v. Remmer* and many other
5 cases.

6 My ruling is this. On the law, the defendant has the
7 burden of proving both the fact of the improper comment or
8 question by the clerk of court, Rebecca Hill, to the juror,
9 a juror or jurors; and two, prejudice suffered by the
10 defendant, specifically that the Hill improper comments to
11 the juror or jurors influenced the juror to vote to convict
12 defendant Murdaugh.

13 The facts. Did Clerk of Court Hill make comments to
14 any juror which expressed her opinion what the verdict
15 would be? Ms. Hill denies, A, and so the question becomes
16 was her denial credible.

17 I find that the clerk of court is not completely
18 credible as a witness. Ms. Hill was attracted by the siren
19 call of celebrity. She wanted to write a book about the
20 trial and expressed that as early as November 2022, long
21 before the trial began. She denies that this is so, but I
22 find that she stated to the clerk of court Rhonda McElveen
23 and others her desire for a guilty verdict because it would
24 sell books. She made comments about Murdaugh's demeanor as
25 he testified, and she made some of those comments before he

1 testified to at least one and maybe more jurors.

2 Did Clerk of Court Hill's comments have any impact on
3 the verdict of the jury? I find that the answer to this
4 question is no.

5 Each member of this jury took their involuntary
6 assignment very seriously. They obeyed the instructions of
7 the court; they obeyed their oath. These good and decent
8 citizens of Colleton County stood to their duty and
9 rendered their verdict without fear or favor. It was a
10 difficult task. Eleven of the jurors very unconditionally
11 said they either heard no comment or if they heard a
12 comment, it had no effect.

13 One juror was ambivalent in her testimony. She was
14 then examined on her previous affidavit, in which she said
15 the effect, if any, that she had was pressure she felt from
16 other jurors. The cases are myriad that pressure from
17 fellow jurors is a part of the normal give and take of jury
18 deliberations. The court is not to inquire in any way
19 about what is said in those deliberations. But the juror
20 was somewhat ambivalent. Said on her oath at time of trial
21 twice and said on her oath before me in these proceedings
22 that she stood to her oath.

23 The clerk of court allowed public attention of the
24 moment to overcome her duty.

25 I have read the entire transcript of this lengthy

1 trial, not an easy task. I have studied in detail all the
2 authorities cited. I have independently researched the
3 case law and learned treatises and scholarly articles on
4 the subject. Although there is certainly a split in the
5 federal circuits and in the states on the standard of
6 review, I simply do not believe that the authority of our
7 South Carolina Supreme Court requires a new trial in a very
8 lengthy trial such as this on the strength of some fleeting
9 and foolish comments by a publicity influenced clerk of
10 court.

11 This is a matter within the discretion of the trial
12 judge, and I am the trial judge at this moment. I do not
13 feel that I abuse my discretion when I find the defendant's
14 motion for a new trial on the factual record before me must
15 be denied, and it is so ordered. I will file a fuller
16 order which denies this motion on the grounds I have
17 recited on the record before me as the trial judge and the
18 authorities that have been cited by all parties in this
19 matter.

20 To that end, I will hold the record open. I direct
21 that within four business days of receipt by the attorneys
22 in this matter of a transcript of these proceedings a
23 proposed order by the State denying the defendant's motion
24 for a new trial with citations be sent to me and to
25 opposing counsel. I will allow the defendant four business

1 days from receipt of the State's proposed order to lodge
2 objections and/or submit an alternative proposed order.

3 Upon receipt by the Court of all proposed orders, I
4 will finalize this record, submit a written order, and I
5 will at that time transmit the written order to the Court
6 of Appeals, the court which has remanded this matter to me.

7 This hearing is adjourned.

8 MR. HARPOOTLIAN: Thank you, Your Honor.

9 THE COURT: Thank you.

10 Let me say this, and I should have said it before I
11 began my order.

12 Hey.

13 BAILIFF: Order.

14 THE COURT: Members of the audience, would you just be
15 patient with me for one more minute? Please keep your
16 seats.

17 I have probably had more experience with trial work
18 than anyone else in this room for many years, and it has
19 been an absolute pleasure to receive from these learned
20 lawyers some of the best briefs I've ever received. I know
21 they are a product not just of the attorneys who presented
22 to me but of the attorneys who sit with them and help
23 compose the research and the writings that I received. I
24 know that I put you on a very tight timeline, but my
25 feeling is these matters are best disposed of by the trial

1 judge in a very timely manner so that you may then go to
2 the authorities that really count more than I do. That is
3 the appellate authorities who will decide what the standard
4 in this particular matter is.

5 I've not seen a case such as this before. I doubt
6 whether our appellate judges have seen a case such as this
7 before, and they will take a lengthy time to study the
8 record in this matter, the record in the part remanded to
9 me. There are many issues in this case, issues over which
10 I have absolutely no authority whatsoever.

11 But I will say this about the record now that I have
12 read it, and I will say this about the testimony that I
13 heard Friday and today. Judge Newman said it best in his
14 sentencing when he discussed the weight and the measure of
15 the case presented, the testimony and evidence submitted in
16 this case when it was tried. It is a very compelling case
17 supporting the verdict that the jurors reached. He said it
18 with a lot more detail than I do, but now that I have read
19 the record, I say as the successor trial judge I agree that
20 the evidence was overwhelming and the jury verdict not
21 surprising.

22 This matter is now adjourned.

23 (WHEREUPON, THE CASE IS AT EASE.)

24 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR COLLETON COUNTY, SOUTH CAROLINA, ON THE 26TH AND 29TH DAYS OF JANUARY, 2024.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM
CERTIFIED VERBATIM REPORTER - MASTER
CERTIFICATE OF MERIT

COLUMBIA, SOUTH CAROLINA

FEBRUARY 29TH, 2024

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT B

(Motion for New Trial)

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

**COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

State of South Carolina,

v.

Richard Alexander Murdaugh,

Defendant.

Indictment Nos. 2022-GS-15-00592, -593,
-594, and -595

MOTION FOR A NEW TRIAL

Defendant Richard Alexander Murdaugh, through undersigned counsel, pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure, hereby moves the Court for a new trial after discovering that the Clerk of Court tampered with the jury by advising them not to believe Murdaugh's testimony and other evidence presented by the defense, pressuring them to reach a quick guilty verdict, and even misrepresenting critical and material information to the trial judge in her campaign to remove a juror she believed to be favorable to the defense.¹

Specifically, during trial the Colleton County Clerk of Court, Rebecca Hill, instructed jurors not to be "misled" by evidence presented in Mr. Murdaugh's defense. She told jurors not to be "fooled by" Mr. Murdaugh's testimony in his own defense. Ms. Hill had frequent private conversations with the jury foreperson, a Court-appointed substitution for the foreperson the jury elected for itself at the request of Ms. Hill. During the trial, Ms. Hill asked jurors for their opinions about Mr. Murdaugh's guilt or innocence. Ms. Hill invented a story about a Facebook post to remove a juror she believed might not vote guilty. Ms. Hill pressured the jurors to reach a quick verdict, telling them from the outset of their deliberations that it "shouldn't take them long." Ms. Hill did these things to secure a book deal for herself and media appearances that would not happen

¹ On October 17, 2023, the South Carolina Court of Appeals issued an Order holding Murdaugh's appeal in abeyance and remanded the case for consideration of this Motion for New Trial.

in the event of a mistrial. Ms. Hill betrayed her oath of office for money and fame. Once these facts are proven, the law does not allow the Court any discretion about how to respond. It must grant a new trial.

I. Statement of Facts

Mr. Murdaugh was indicted for the murder of his wife Maggie and son Paul on July 14, 2022. His murder trial began January 23, 2023. The presiding judge was the Honorable Clifton Newman. The trial ran for six weeks, ending with convictions on the evening of March 2, 2023, and sentencing on March 3, 2023. The State rested its case-in-chief and the defense began its case on Friday, February 17, 2023.

Court was not held on February 20, which was President's Day. After returning from the holiday, Ms. Hill began to enter the jury rooms often. Aff. of Juror No. 630 ¶ 7, Aug. 14, 2023 (attached as **Exhibit A**). As the defense began its case, Ms. Hill told jurors, "Y'all are going to hear things that will throw you all off. Don't let this distract you or mislead you." Aff. of Holli Miller *re Juror No. 741* ¶ 6, Sep. 1, 2023 (attached as **Exhibit B**). Additionally, Ms. Hill and Juror No. 826, the new jury foreperson, on multiple occasions went to another room to have private conversations lasting five or ten minutes. Ex. A ¶ 8. Sometimes they would go into the jury room's single-occupancy bathroom together. Ex. B ¶ 4. Foreperson Juror No. 826 never said anything about the content of those conversations to other jurors. Ex. A ¶ 8. Ms. Hill even instructed jurors they could not ask Foreperson Juror No. 826 about the conversations. Ex. B ¶ 4.

Two days later, on Thursday, February 23, and continuing through the next day, Mr. Murdaugh testified in his own defense. Before he began his testimony, Ms. Hill told jurors "not to be fooled" by the evidence Mr. Murdaugh's attorneys presented, which at least one juror understood to mean that Mr. Murdaugh would lie when he testified. Ex. A ¶ 2. Ms. Hill also instructed the jury to "watch him closely," to "look at his actions," and to "look at his movements,"

which at least one juror understood to mean that Mr. Murdaugh was guilty. *Id.* Immediately after Mr. Murdaugh testified, Foreperson Juror No. 826 told the jury that Mr. Murdaugh was crying on cue. Ex. A ¶ 4. She also criticized the former foreperson, Juror No. 589, for handing Mr. Murdaugh a box of tissues when he was crying on the stand because “that is what the defense wants us to do.” Ex. A ¶ 5.

The next court day after Mr. Murdaugh’s testimony, Monday, February 27, Ms. Hill told Judge Newman about a Facebook posting she purportedly saw on the evening of Friday, February 24 (the day Mr. Murdaugh’s testimony concluded), while perusing a Facebook group page called “Walterboro Word of Mouth.” Draft Tr. of *in camera* conf. 41:3–42:15, Mar. 1, 2023 (attached as **Exhibit C**). The post, purportedly by Juror No. 785’s ex-husband Tim Stone, allegedly stated that his “his ex-wife was saying that she was on the jury and saying stuff about how her verdict was going to be.” *Id.* Judge Newman asked her to produce a copy of the posting. *Id.* She could not produce a copy, but according to Ms. Hill, a subordinate employee in the Clerk’s Office, Lori Weiss, discovered that the post was taken down and replaced with an apology post:

Folks I posted a ugly post yesterday to which I have deleted and I kinda in a round about way directed it towards a certain person and I would like to apologize to everyone who read it that ugly for me to do that and yes I let Satan control me and I broke down and started drinking and when I was drunk I made that post and I’m sorry

Id.; Rebecca Hill, “Behind the Doors of Justice” at 97 (2023) (attached as **Exhibit D**); Timothy Stone Facebook Post, Feb. 16, 2023 (attached as **Exhibit E**). The “apology” post states the initial post was already deleted on February 16, so it would have been impossible for Ms. Hill to see the original post on February 24.

Mr. Stone, Juror No. 785’s ex-husband, avers in a sworn statement that he made no such posts. Aff. of Tim Stone ¶ 2, Aug. 18, 2023 (attached as **Exhibit F**). Mr. Murdaugh has obtained an authentic download of the entirety of Mr. Stone’s Facebook activity from January 23, 2023, to

March 2, 2023, which confirms he did not post the apology (the supposed original post if deleted would not be recoverable at this point under Facebook's retention policies) and that he in fact never posted anything to the "Walterboro Word of Mouth" Facebook page during the trial. Aff. of Phillip Barber ¶¶ 2-5, Aug. 31, 2023 (attached as **Exhibit G**).

The person who made the apology post is an unrelated person also named Timothy Stone, whose Facebook profile picture is not Juror No. 785's ex-husband. He lives in Georgia and has never posted anything to the Facebook group "Walterboro Word of Mouth." Aff. of Timothy Stone ¶¶ 1-4, Sept. 12, 2023 (attached as **Exhibit L**). The original post for which Mr. Stone apologized pertained to an argument about Mr. Stone's wife's aunt "sticking her nose in [his] business." He felt "terrible" about that post, deleted it, and posted an apology the next day. Ex. L ¶ 6.

On February 28, Ms. Hill questioned Juror No. 785 about the fictitious post on "Walterboro Word of Mouth" alone in her office in the courthouse. Aff. of Juror No. 785 ¶ 3, Aug. 13, 2023 (attached as **Exhibit H**). She told Juror No. 785 that someone had emailed her stating her ex-husband, Tim Stone, posted on the "Walterboro Word of Mouth" Facebook page that Juror No. 785 had been drinking with her ex-husband, and that while drunk she expressed opinions on the guilt or innocence of Mr. Murdaugh. Ex. H ¶ 4. Juror No. 785 told Ms. Hill that never happened and that she had not seen her ex-husband in ten years. *Id.* Juror No. 785 asked to see the post, but Ms. Hill would not show it to her. Ex. H ¶ 5. Ms. Hill directly asked Juror No. 785 whether she was inclined to vote guilty or not guilty. Ex. H ¶ 3. Juror No. 785 said she had not made up her mind. *Id.*

Later that day, Ms. Hill told Juror No. 785 that SLED and Colleton County Sheriff's Office personnel went to Mr. Stone's house, and he confirmed he made the post. Ex. H ¶ 6. This is a fabrication by Ms. Hill. Ms. Hill told Juror No. 785 she would somehow "reinstate" a restraining

order Juror No. 785 previously had against Mr. Stone, which is something that Ms. Hill did not have the authority to do.

Still later that day, Judge Newman examined Juror No. 785 regarding both the nonexistent Facebook post and the tenant/co-worker email² *in camera*. Draft Tr. Of *in camera* conf. 3:8–6:19, Feb. 28, 2023 (attached as **Exhibit I**). Juror No. 785 described her interactions with Ms. Hill regarding the Facebook post. *Id.* She denied making any inappropriate comments about the case to third parties, and stated she wanted to hear closing arguments before forming an opinion on Mr. Murdaugh’s guilt or innocence. *Id.*

After she was dismissed, Judge Newman said, “Oh boy. I’m not too pleased about the clerk interrogating a juror as opposed to coming to me and bringing it to me.” Ex. I at 13:20–22. He was right to be concerned.

The next day, on March 1, 2023, the jury visited Moselle, the site of the murders. During the visit, Foreperson Juror No. 826 and Ms. Hill walked off to have yet another private conversation. Ex. H ¶ 16; Ex. B ¶ 9. In her book, Ms. Hill more vaguely hints at communicating her opinion on Mr. Murdaugh’s guilt to the jury during the visit to the Moselle property:

While the jurors viewed the Moselle property, we all could hear and see Alex’s story was impossible.

Some of us either from the courthouse, law enforcement, or jury at Moselle had an epiphany and shared our thoughts with our eyes. At that moment, many of us standing there knew. I knew and they knew that Alex was guilty.

Ex. D at 108.

² A co-worker of a tenant of Juror No. 785 emailed the Court on February 27 stating that the tenant said her landlord was a juror and had expressed an opinion when delivering a refrigerator to the property more than a week earlier.

That day Judge Newman also held an *in camera* conference regarding the tenant/co-worker email, in which he decided to revisit the Facebook post issue with Ms. Hill:

THE COURT: Okay. Well, let me see what Becky is talking about. I wanted to revisit the Facebook post that you mentioned yesterday.

MS. HILL: Uh-huh, right.

THE COURT: That's Becky Hill, the Clerk of Court. Can you tell us about that Facebook post?

MS. HILL: Yes. I think it was Friday evening just for a brief moment I perused Facebook, got on Walterboro Word of Mouth, and saw where someone had said that – well, it was the ex-husband of a juror, and he said that he noticed that his ex-wife was saying that she was on the jury and saying stuff about how her verdict was going to be, and that he was the ex-husband but she was known for talking way too much. And then I just kept on scrolling because that was enough for me. I've gotten enough.

THE COURT: And how did you determine who he was talking about?

MS. HILL: When I heard there was an email on Monday I figured the two went together, if it was true.

THE COURT: Well, she's confirmed she has an ex-husband who she has three restraining orders out against so –

MS. HILL: Right. So then we looked on Monday after you told me to try to go back and look for it and we couldn't find it. But then we found out his name, and we found the post and printed it out where he said that he had put something up, but that he had deleted it at the time that he had put stuff out there that wasn't nice.

THE COURT: He said he got drunk afterwards.

MR. MEADORS: Something about the devil.

MR. HARPOOTLIAN: Didn't he say it was satan in it?

MS. HILL: Satan was in it, yes. In all of the details, yes.

THE COURT: All right.

MS. HILL: Made me do it.

THE COURT: Okay. I just wanted to have that on the record, you're reading a Facebook post by the ex-husband who said it. Of course, you haven't talked with him so you don't know where he got his information from.

MS. HILL: I don't. I can find it, though.

Ex. C at 41:3–42:16. But Ms. Hill never saw any such Facebook post. She made it up. Further, she knew the “apology” post was not posted by Juror No. 785’s ex-husband. Juror No. 785 showed Ms. Hill a picture of her ex-husband, which is not the Facebook profile picture of the other Mr. Stone’s post about Satan. Ex. H ¶ 8.

The next day, March 2, 2023—the day of the verdict—Juror No. 785 received a call from her ex-husband that she did not answer. Ex. H ¶ 9. The call upset her because Ms. Hill’s lies had led her to believe he was posting on Facebook about her and might be stalking her. *Id.* Juror No. 785 asked to speak with Ms. Hill. *Id.* She told Ms. Hill she was scared. *Id.* Ms. Hill told her that “the Murdaughs” probably “got to him,” meaning her ex-husband. *Id.*

Ms. Hill once again asked her opinion regarding Mr. Murdaugh’s guilt. Ex. H ¶ 10. Juror No. 785 told her that Creighton Waters’ closing was good, but that she still had questions. *Id.* Ms. Hill asked what questions and Juror No. 785 replied that she was concerned that no murder weapon was found. *Id.* Ms. Hill then asked, “well, what makes you think he’s guilty?” *Id.* Juror No. 785 said Paul’s video at the dog kennels. *Id.* Ms. Hill then told Juror No. 785 “that everything Mr. Murdaugh has said has been lies and that I should forget about the guns, they will never be seen again.” *Id.* Ms. Hill then asked Juror No. 785 about the views of the rest of the jury, telling her that if the foreperson would “just go in and ask for a raise in hands this would be over and done with” and “everyone needs to be on the same page.” Ex. H ¶ 11.

Juror No. 785 went to the jury room and, ten minutes later, was excused from the jury. Ex. H ¶ 12. In open court immediately after her excusal, Juror No. 785 asked Judge Newman if he had spoken with the Clerk of Court, referring to the conversation earlier that morning with Ms.

Hill. Video of Trial Proceedings, Mar. 2, 2023, available at https://www.youtube.com/watch?v=nbuMq15qY2Q&ab_channel=ABCNews4. Judge Newman responded that “I have not spoken with her today” and that this is “totally independent” of any “conversation” regarding her ex-husband, apparently misunderstanding her question to refer to the issue of the Facebook post. *Id.*

When the jury began deliberations that evening, Ms. Hill told them that “this shouldn’t take us long,” and that if they deliberated past 11 p.m., they would be taken directly to a hotel even though none were prepared to stay overnight. Ex. A ¶ 9. Additionally, smokers on the jury asked to be allowed to take smoke breaks as they had previously been allowed to do during the six-week trial, but Ms. Hill told them they could not smoke until deliberations were complete. *Id.*; Aff. of Holli Miller *re Juror No. 326* ¶ 7, Sep. 1, 2023 (attached as **Exhibit J**). There were six smokers on the jury. Ex. J ¶ 7.

Ms. Hill told jurors that after the trial they would be famous and predicted that the media would request interviews with them. Ms. Hill even handed out reporters’ business cards to jurors during the trial. Ex. B ¶ 5. Juror No. 578 took this to heart and made an appearance on Good Morning America the night of the verdict, which is why on the day the jury began deliberations he wore a suit coat for the first time during the trial. After the verdict and immediately before sentencing, Ms. Hill pressured the jury to speak as a group to reporters for a network news show. Ex. A ¶ 11. She traveled with jurors to New York City when they appeared on the Today show. Ex. D at 93–94. She got her book deal. Her book, “Behind the Doors of Justice,” was released on August 1, 2023.

A last point about Ms. Hill’s efforts to promote her book shows her dishonest efforts to profit from the trial continued well after the verdict. A film crew negotiated a contract with the

Colleton County Sheriff's Department to use courthouse bailiffs to provide security while they filmed a documentary at the Colleton County Courthouse when it was closed for Confederate Memorial Day on May 10, 2023. The film crew had previously recorded an interview with Ms. Hill. On May 9, Ms. Hill sent a memorandum to the film crew purporting to be an "Addendum" to the contract. Mem. from Rebecca Hill, May 9, 2023 (attached as **Exhibit K**). In it, she demanded that the film crew pay Colleton County a fee of \$1,000 per day for use of courthouse facilities and made a nonsensical statement about not having authority outside South Carolina that reflects a failure to understand the choice-of-law clause in the contract. *Id.* Then she bizarrely added a handwritten demand:

Also, in exchange for the use of the likeness of Rebecca Hill in an interview, a minimum of [unclear] 5 second video and audio clips will accompany the usage on the first reference. The book cover for the book, "Behind the Doors of Justice: The Murdaugh Murders[""] will be shown and audio will include Becky's introduction as Clerk of Court for Colleton County and author of the book.

Id. The film crew ignored her addendum as the contract had already been executed. But like her jury tampering during trial, it was an attempt to violate South Carolina Code § 8-13-700(A), which provides, "No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself"

II. Legal Standard

"A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influence." *State v. Johnson*, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990) (internal quotation marks omitted). "[W]hen the defendant presents a credible allegation of communications or contact between a third party and a juror concerning the matter pending before the jury" the defendant has an "entitlement to an evidentiary hearing." *Barnes v. Joyner*, 751 F.3d 229, 242 (4th Cir. 2014) (citing *Remmer v. United States*, 347 U.S. 227 (1954)); *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 in which the defendant has the opportunity to prove actual bias.”).³

If the defendant proves the alleged contacts occurred, the prosecution bears the burden to show they were harmless:

In a criminal case, any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial, if not made in pursuance of known rules of the court and the instructions and directions of the court made during the trial, with full knowledge of the parties. The presumption is not conclusive, but the burden rests heavily upon the Government to establish, after notice to and hearing of the defendant, that such contact with the juror was harmless to the defendant.

Remmer, 347 U.S. at 229. The presumption is even stronger where the contact was made by a court official. Where “[t]here was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained . . . 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.” *State v. Cameron*, 311 S.C. 204, 207–08, 428 S.E.2d 10, 12 (Ct. App. 1993) (quoting *Holmes v. United States*, 284 F.2d 716, 718 (4th Cir. 1960)) (emphasis added).

III. Argument

A state official, Rebecca Hill, the elected Clerk of Court, had extensive private communications with members of the jury during trial. This allegation is supported by sworn

³ The trial court is directed to consider whether (1) the contact was made in an effort to influence the juror by or on behalf of a party in whose favor the verdict was rendered *or*; (2) the contact was such as would obviously influence the juror *or*; (3) the trial judge finds the contact either influenced or probably influenced the juror. *Blake by Adams v. Spartanburg Gen. Hosp.*, 307 S.C. 14, 16–18, 413 S.E.2d 816, 817–18 (1992).

affidavits of jurors and a witness to juror interviews, testimony at *in camera* proceedings, and other evidence including Ms. Hill's own book. The Court, therefore, must hold a *Remmer* evidentiary hearing. *Smith*, 455 U.S. at 215; *Barnes*, 751 F.3d at 242. If the allegations are proven at the evidentiary hearing, then under binding appellate precedent the Court must grant a new trial unless it "clearly appears that the subject matter of the communication was harmless and could not have affected the verdict." *Cameron*, 311 S.C. at 207–08, 428 S.E.2d at 12. The subject matter of Ms. Hill's communications was the evidence being presented at trial by the defense. These improper comments and efforts to influence the jurors' verdict vitiated the sanctity of the jury's deliberation and Murdaugh's sacrosanct right to a fair and impartial jury. Therefore, the Court must grant a new trial if the allegations are proven.

In a six-week trial, people will talk when they should not. They will say things they should not say. Mistakes will be made. The participants in a trial are fallible human beings. Lawyers combing the proceedings after the fact will always find they made mistakes and errors. If that were enough to force a redo of the trial, no verdict would stand, and trials would be repeated forever. To avoid that, Courts properly strain to find that mistakes made during trial are "harmless," meaning they did not change the result.

But the issue now before the Court are not the ordinary and inevitable mistakes that occur in any trial. The issue here is that an elected state official engaged in intentional misconduct—deliberately violating a defendant's constitutional right to a fair trial before an impartial jury—to secure financial gain for herself. Where a state actor engages in private communication with the jury about the merits of the prosecution, the verdict is impossible to sustain. For example, in *Parker v. Gladden*, a bailiff told a juror in a murder trial "that wicked fellow, he is guilty." 385 U.S. 363, 363 (1966). The Supreme Court of Oregon held the statement did not require a new trial

because it was not shown the statement prejudiced the outcome of the trial. The U.S. Supreme Court reversed, holding “[t]he evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel,” and “[w]e have followed the undeviating rule, that the rights of confrontation and cross-examination are among the fundamental requirements of a constitutionally fair trial.” *Id.* at 364–65 (internal quotation marks and citations omitted).

In this case, the Court has declared on the record that “the verdict that you’ve [the jury] reached is supported by the evidence, circumstantial evidence, direct evidence, all of the evidence pointed to only one conclusion, that’s the conclusion you all [the jury] reach now.” Video of Trial Proceedings at 10:00:32–:51, Mar. 2, 2023, available at https://www.youtube.com/watch?v=nbuMq15qY2Q&ab_channel=ABCNews4. The Court has, therefore, foreshadowed the outcome of any “harmless error” analysis. But the rule for deciding whether to grant a new trial is not whether the Court believes the outcome of the trial would have been the same had Ms. Hill’s jury tampering not occurred. If that were the case, the Court would sustain a guilty verdict even if she coerced the jury to vote guilty at gunpoint, because, in the Court’s opinion, “all of the evidence pointed to only one conclusion”—the guilt of the accused. If the strength of the evidence against the accused in the eyes of the Court excuses deliberate jury tampering by a state actor, the result is a directed verdict for the prosecution, a structural error. That cannot be the law. *Cf. Neder v. United States*, 527 U.S. 1, 34 (1999) (Scalia, J., concurring in part) (noting that even if “the judge certainly reached the ‘right’ result,” “a directed verdict against the defendant . . . would be *per se* reversible *no matter how overwhelming the unfavorable evidence*,” because “[t]he very premise

of structural-error review is that even convictions reflecting the ‘right’ result are reversed for the sake of protecting a basic right.” (emphasis in original)).

Instead, the law requires the “subject matter” of the communication to be harmless—“clearly” harmless. *Cameron*, 311 S.C. at 208, 428 S.E.2d at 12. Asking the jury what it wants for lunch is clearly harmless. Telling it not to believe the defendant when he testifies is not.

Our Supreme Court recently made this point in *State v. Green*, 432 S.C. 97, 851 S.E.2d 440 (2020). In *Green*, during jury deliberations a juror asked a bailiff “what would happen in the event of a deadlock, and he responded the judge would likely give them an *Allen* charge and ask if they could stay later.” *State v. Green*, 427 S.C. 223, 229, 830 S.E.2d 711, 713 (Ct. App. 2019), *aff’d as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020) (citation omitted). The Court of Appeals held the bailiff’s comments were presumptively prejudicial because of his official position, but that the State rebutted that presumption by showing that for various reasons the remark did not in fact influence the outcome of the jury’s deliberations. *Id.* at 236, 830 S.E.2d at 717.

The Supreme Court affirmed but modified the decision to correct the Court of Appeals’ reasoning. The communication was not presumptively prejudicial because the subject matter of the communication was harmless: “The bailiff’s actions here—though improper—did not touch the merits, but dealt only with the procedural question of how the judge might handle a jury impasse that apparently never materialized.” *Green*, 432 S.C. at 100, 851 S.E.2d at 441. In other words, a bailiff telling the jury that if it is deadlocked, the judge will instruct them to keep deliberating is improper but likely harmless because the subject matter is procedural or logistical, rather than to the merits of the case.

Telling the jury not to believe the defendant’s defense or his testimony when he testifies regards the merits of the case. Ms. Hill’s extensive, deliberate, and self-interested jury tampering

far exceeds the simple bailiff mistakes that forced a retrial in *Cameron*, where “a bailiff’s misleading response to a juror’s question about sentencing options compromised the jury’s impartiality because it left the impression that their verdict could not affect the trial court’s sentencing discretion,” or in *Blake by Adams v. Spartanburg General Hospital*, where a bailiff told a juror “that the trial judge ‘did not like a hung jury, and that a hung jury places an extra burden on taxpayers.’” See *State v. Green*, 427 S.C. at 237, 830 S.E.2d at 717–18 (citing 311 S.C. at 208, 428 S.E.2d at 12 and quoting 307 S.C. 14, 16, 413 S.E.2d 816, 817 (1992)). Unlike the honest mistakes of the bailiffs in those cases, Ms. Hill had many private conversations with jurors about the merits of the case. She asked jurors about their opinions about Mr. Murdaugh’s guilt or innocence. She instructed them not to believe evidence presented in Mr. Murdaugh’s defense, including his own testimony. She lied to the judge to remove a juror she believed might not vote guilty, and she pressured jurors to reach a guilty verdict quickly so she could profit from it. Each of these actions violated Ms. Hill’s oath of office, her responsibility to the citizenry and the judiciary of this state, and Mr. Murdaugh’s constitutional right to a fair and impartial jury.

The law applied to these facts requires a new trial.

IV. Conclusion

For the foregoing reasons, Mr. Murdaugh respectfully submits the Court must hold an evidentiary hearing to receive proof of the facts stated above. When those facts are proven, the Court must grant a new trial.

Respectfully submitted,



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Attorneys for Richard Alexander Murdaugh

October 27, 2023
Columbia, South Carolina.

EXHIBIT A

(Affidavit of Juror No. 630)

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

AFFIDAVIT OF
JUROR #630

PERSONALLY appeared before me, [REDACTED] who being first duly sworn, deposes and states as follows:

1. I was juror #630 in the case of *State of South Carolina v. Richard Alexander Murdaugh* tried in Colleton County, South Carolina.
2. Toward the end of the trial, after the President's Day break but before Mr. Murdaugh testified, the Clerk of Court, Rebecca Hill, told the jury "not to be fooled" by the evidence presented by Mr. Murdaugh's attorneys, which I understood to mean that Mr. Murdaugh would lie when he testified.
3. She also instructed the jury to "watch him closely" immediately before he testified, including "look at his actions" and "look at his movements," which I understood to mean that he was guilty.
4. Immediately after he testified, the foreperson, [REDACTED] Juror #826, said Mr. Murdaugh was crying on cue.
5. The foreperson, Juror #826, criticized the former foreperson, [REDACTED] Juror #589, for handing Mr. Murdaugh a box of tissues when he was crying on the stand while testifying about his murdered son. She told the jury we cannot interact with Mr. Murdaugh because "that is what the defense wants us to do."
6. The jury frequently discussed the case during breaks before deliberations.
7. Toward the end of the trial, Ms. Hill came into the jury room a lot.
8. Ms. Hill and the foreperson, Juror #826, had private conversations on multiple occasions. The foreperson, Juror #826, would tell the bailiff that she needed to speak

with Ms. Hill. Ms. Hill would arrive, and then she and the foreperson, Juror #826, would go to another room to have a private conversation. The conversations typically lasted 5 to 10 minutes. The foreperson, Juror #826, never said anything about the content of the conversation. For example, she never communicated logistical information after those conversations. This happened two or more times, more frequently toward the end of the trial.

9. When we began deliberations, Ms. Hill told us that "this shouldn't take us long," and that if we deliberated past 11pm, we would be taken directly to a hotel. We had driven from our homes that morning and were not prepared to stay overnight. Additionally, smokers on the jury asked to be allowed to take smoke breaks but were told they could not smoke until deliberations were complete.

10. I had questions about Mr. Murdaugh's guilt but voted guilty because I felt pressured by the other jurors.

11. After the verdict and immediately before sentencing, Ms. Hill pressured the jury to speak as a group to reporters from the television show, 

FURTHER AFFIANT SAYETH NOT.


Juror #630

August 14, 2023

SWORN TO before me this 14 day
of August, 2023


Notary Public for South Carolina

My Commission Expires: July 25, 2032

EXHIBIT B

(Affidavit of H. Miller *re Juror No. 741*)

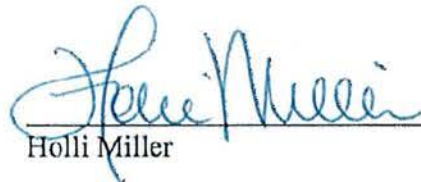
STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) AFFIDAVIT OF HOLLI MILLER

PERSONALLY appeared before me, Holli Miller, who being first duly sworn, deposes and states as follows:

1. On August 6, 2023, Dick Harpootlian, Jim Griffin and I met with [REDACTED] Juror #741 in the case of *State of South Carolina v. Richard Alexander Murdaugh* at her home located at [REDACTED]
2. At the meeting on August 6, [REDACTED] indicated she would sign an affidavit. However, we were unable to arrange with her a suitable time and place.
3. During the meeting, [REDACTED] relayed the following information to us.
4. During the trial, she witnessed the Clerk of Court, Becky Hill, come to the jury room and Ms. Hill and the foreperson [REDACTED] #826 went into the bathroom. After Ms. Hill and the foreperson exited the bathroom, Ms. Hill told the jurors they could not ask the foreperson questions.
5. Several times during the trial, Ms. Hill told the jurors that the media would want to interview jurors at the end of the trial and during one of these conversations she passed out business cards from the media to jurors. At the end of the trial, Ms. Hill told [REDACTED] that no one from the media wanted to interview her.
6. Right before the defense put up their case, Ms. Hill told the jurors "Y'all are going to hear things that will throw you all off. Don't let this distract you or mislead you."
7. After Alex testified, eight jurors indicated they did not believe his testimony.
8. [REDACTED] recalled [REDACTED] Juror #544 (known as "Boston" by many of the jurors) was very emotional during the trial.

9. During the visit to Moselle, [REDACTED] Juror #826 and [REDACTED] walked to the scene together. Then Juror #826 began walking with the Clerk of Court, Becky Hill.
10. There were times the jurors were not kept together, but were in two separate rooms. [REDACTED] noticed jurors talking about the case before deliberations began. Neither she nor [REDACTED] Juror #785 joined in on the conversations about Alex.
11. As the jury was deliberating, she believes Judge Newman came to the room she was in and told her the jury would have to spend the night at a hotel if they did not have a vote by a certain time, but she does not recall the time deadline.
12. [REDACTED] Juror #741 was the first former juror to provide information that the Clerk of Court made statements to members of the jury about the evidence presented during the trial, prior to jury deliberations. Ms. Hill's conduct was corroborated by other jurors during subsequent interviews.

FURTHER AFFIANT SAYETH NOT.


Holli Miller

September 1, 2023

SWORN TO before me this 1st day
of September, 2023


Notary Public for South Carolina
My Commission Expires: 16/2-7/33

EXHIBIT C

(Draft Transcript of Records Excerpt from *in camera* conference, March 1, 2023)

1 to withhold any opinions. And then they say: Can't talk to
2 you anymore, and walks off. They're off the jury?

3 THE COURT: Okay. Well, let me see what Becky is
4 talking about. I wanted to revisit the Facebook post that
5 you mentioned yesterday.

6 MS. HILL: Uh-huh, right.

7 THE COURT: That's Becky Hill, the Clerk of Court. Can
8 you tell us about that Facebook post?

9 MS. HILL: Yes. I think it was Friday evening just for
10 a brief moment I perused Facebook, got on Walterboro Word of
11 Mouth, and saw where someone had said that -- well, it was
12 the ex-husband of a juror, and he said that he noticed that
13 his ex-wife was saying that she was on the jury and saying
14 stuff about how her verdict was going to be, and that he was
15 the ex-husband but she was known for talking way too much.
16 And then I just kept on scrolling because that was enough
17 for me. I've gotten enough.

18 THE COURT: And how did you determine who he was
19 talking about?

20 MS. HILL: When I heard there was an email on Monday I
21 figured the two went together, if it was true.

22 THE COURT: Well, she's confirmed she has an ex-husband
23 who she has three restraining orders out against so --

24 MS. HILL: Right. So then we looked on Monday after
25 you told me to try to go back and look for it and we

1 couldn't find it. But then we found out his name, and we
2 found the post and printed it out where he said that he had
3 put something up, but that he had deleted it at the time
4 that he had put stuff out there that wasn't nice.

5 THE COURT: He said he got drunk afterwards.

6 MR. MEADORS: Something about the devil.

7 MR. HARPOOTLIAN: Didn't he say it was satan in it?

8 MS. HILL: Satan was in it, yes. In all of the
9 details, yes.

10 THE COURT: All right.

11 MS. HILL: Made me do it.

12 THE COURT: Okay. I just wanted to have that on the
13 record, you're reading a Facebook post by the ex-husband who
14 said it. Of course, you haven't talked with him so you
15 don't know where he got his information from.

16 MS. HILL: I don't. I can find it, though.

17 MR. FERNANDEZ: We do know his name for what it's
18 worth.

19 THE COURT: Do you think he will be sober?

20 MS. HILL: I don't know. Probably not if I had to
21 guess.

22 MR. HARPOOTLIAN: It is Wednesday. Well, is today
23 Tuesday or Wednesday?

24 MR. FERNANDEZ: Wednesday.

25 MR. HARPOOTLIAN: Well, it's Wednesday night so he's

EXHIBIT D

(Rebecca Hill, *Behind the Doors of Justice*
excerpts)

REBECCA "BECKY" H. HILL

Clerk of Court

with

NEIL R. GORDON

*Rebecca Hill
@BeckyHill*

BEHIND THE
DOORS OF JUSTICE:
THE MURDAUGH MURDERS



professional, and we bonded over a cancer diagnosis that both of our families had endured.

While *Dateline* producers were in town for the trial in February 2023, they asked for Judge Newman's cell phone number, which I was given permission to provide to them. Then Craig reached out to Judge Newman to reconnect.

Craig grew up in Columbia, South Carolina, where his family and Judge Newman's family knew each other. In fact, Craig was friends with Judge Newman's late son.

As Judge Newman was beginning his first of many terms as a circuit court judge in Columbia, Craig was beginning his career there at WIS-TV before getting recruited to a station in Washington, DC, and then the NBC network in New York.

That exclusive interview with Judge Newman and his daughter—also a judge—took place in Columbia.

Valerie Bauerlein

Valerie Bauerlein is a national *Wall Street Journal* reporter who has covered the South for eighteen years. She was the pool reporter sent to Moselle with pool photographer Andrew J. Whitaker of *The Post and Courier* newspaper.

In October 2021, Valerie signed a book deal with a division of the iconic Penguin Random House publishing company for a book project about the Murdaugh family of South Carolina.

As it so happened, my fifty-fifth birthday fell during the trial in the spring of 2023. My birthday is March 10, and Valerie was born in late February, so it was decided to have a

party for both of us at her Airbnb on the night of her birthday! She invited many of her colleagues who were covering the trial for the regional and national media outlets. There was food, birthday cake, a lot of laughs, and a little "truth serum" in the form of liquid refreshments!

As we were cleaning up after the party, a few of us were asked how we would vote at that point in the trial if we were members of the jury. Before answering, we pledged a "cone of silence," and for that reason, I cannot reveal the results of our "straw jury poll." What I can say is that many of the party guests agreed with what ended up becoming the actual verdict of the trial.

The Today Show and Dateline

Sunday night after Alex was sentenced, I accompanied three jurors from the trial to New York City. As I mentioned earlier, Craig Melvin and Savannah Guthrie of *The Today Show* interviewed the three jurors during a seven-minute, high-energy segment.

While we were all in *The Today Show* green room, we met and took photos with country music star Dustin Lynch, who was also getting ready to appear on the program to sing one of his hit songs.

Once the taping of *The Today Show* concluded, we were whisked away from the 850-foot skyscraper building by a driver in a black Chevy Tahoe to a different studio near 30 Rock, where *Dateline* tapes some of its segments. What stuck

out to me was that one of the jurors mentioned to a producer that she had a craving for pizza and cheesecake, and the next thing we knew, both were delivered in time for lunch!

This trip was extra special for me because it was my first time ever flying in an airplane! We flew from Charleston to New York City, and could order whatever we wanted! I chose pretzels and a Coke to relieve some of my anxiety. Then a black Chevy Tahoe car service was sent to pick us up from LaGuardia Airport, and we got to ride through one of those dark, underwater tunnels that let us out in the "city that never sleeps!"

NBC put us in the hands of the fabulous Haylee Barber, *Dateline* Producer, who put all of us up at a nice Manhattan hotel and fed us at a restaurant on the Avenue of the Americas, a block away from 30 Rock in Midtown Manhattan on the eve of the interviews. Afterwards, the jurors told me they felt like they were heard and loved their fifteen minutes of fame in the Big Apple.

CHAPTER 12

WE, THE PEOPLE: DUTY, HONOR AND SERVICE



"Serve wholeheartedly, as if you were serving the Lord, not people, because you know that the Lord will reward each one for whatever good they do."

—Ephesians 6:7–8, New International Version (NIV)

Working with jurors is always a unique experience, and like with any jury, we had some behind-the-scenes happenings with our jurors, the alternates, and the originals for the Murdaugh trial.

While most of the jurors were focused and engaged during the Murdaugh trial, we did have one juror, who was an alternate at one point, who was not. She was more focused on the crowd: who was watching, who was or wasn't following Judge Newman's rules, and so on. For example, she

"caught" a new visitor to the courtroom, who was sitting directly across from her, who looked like she may have been taking a picture of the jury, and that wasn't going to fly with her.

Another juror couldn't, or wouldn't, sit still during the trial, and it seemed like every time she shifted her chair, it made a loud squeak. Occasionally attorneys would wait for the rhythm of the squeaks to subside before continuing their cross-examination.

Then there was the "egg lady" juror. This juror worked on a monkey farm in the Lowcountry, and she drove Judge Newman bananas one weekend—pun intended! Through the Facebook page "Walterboro Word of Mouth," about 20,000 followers saw this juror's ex-husband post about how she was talking way too much to friends and family about the case. Many people became aware of the situation after court on Friday, February 24, and it was brought to the attention of Judge Newman. I typically didn't have the time or energy to watch any media coverage of the trial, but on that Friday night, I scrolled through the "Walterboro Word of Mouth" social media feed and saw the post from the ex-husband, but he didn't mention the juror's name or her juror number.

At the time, I didn't think anything of it and kept scrolling, mainly because I had been inundated with emails and messages from people all over the world about what they had heard, what they had seen, how the prosecution and defense should run their cases, how Judge Newman should rule, what to address with anyone and everyone involved in the

courthouse, and so on. I felt like a principal dealing with tattletales and problems and issues every day. It was tiring.

When Monday morning came, Judge Newman asked me to find the social media post. One of our techies in the clerk's office, Lori Weiss, looked and couldn't find it at first. Luckily, though, she kept looking and saw where the post was taken down and replaced with an apology from the juror's ex-husband. He said Satan had gotten a hold of him, and he had been drinking at the time he posted and was now very sorry.

After Judge Newman interviewed the juror and corroborating witnesses about this situation, he removed the juror from the jury before court started that Monday morning. We learned later the ex-spouses hadn't seen each other in fourteen years and the former juror had three restraining orders against her ex-husband.

When a juror is removed from a jury, it's normal practice for the judge to ask if there are any personal items they'd like to retrieve from the private jury room. When Judge Newman graciously presented this question to the former juror, she said she just wanted to get her eggs, which caused some laughter in the courtroom and nationally once the media got ahold of the story. Judge Newman even broke out into one of the largest grins I've ever seen.

One of the other jurors raised chickens on their farm and had brought in a dozen eggs to whomever wanted them. At this time, eggs were selling for about eight dollars a dozen, which was very high, so it's understandable why the removed juror wanted her eggs! One of our local singer/songwriters,

While the jurors viewed the Moselle property, we all could hear and see that Alex's story was impossible. God gives us all gifts, and the gift of discernment is shared by many. Some of us either from the courthouse, law enforcement, or jury at Moselle had an epiphany and shared our thoughts with our eyes. At that moment, many of us standing there knew. I knew and they knew that Alex was guilty.

Once we were all back inside our vehicles, heavyhearted and contemplative, our procession headed back along Highway 63 toward the town center of Walterboro. The wind had died down mysteriously, and the sun began to shine through the clouds.

One of the roles of the Clerk of Court is to be "Switzerland" between the jury, the lawyers, the public, and any other entities involved. In the moments riding back in our vehicle—and with the jurors and decision-makers in other vehicles—we were just "regular people," and our thoughts spilled out. Just as the jury would do in a span of three hours, we unanimously came to our own verdict in just three minutes: Guilty.

In my opinion, the decision to visit Moselle by Murdaugh's defense team did not work in their favor. "They were hoping to show that the proximity was too close for one shooter, and they felt like the pictures didn't show the distance correctly," said Doug Brown, who worked for the defense team during the trial.

Many of us question if Alex is bipolar, schizophrenic, or a narcissist, while some wonder if he snapped due to financial

pressure, Paul's boating accident, and the crumbling of the family dynasty. Right is right, and wrong is wrong. When and where did this family begin to blur this fact of life? The moral compass that rules most law-abiding citizens didn't seem to exist in Alex. I don't really want to believe that a father could murder his son and wife. Sometimes, though, the line of love gets blurred and turns into a crime of passion and a crime of desperation. I believe most people cannot fathom killing or hurting a family member, especially in the name of love, but during our time at Moselle, Alex's fate was sealed.

EXHIBIT E

(Timothy Stone Facebook post)

Timothy's Post



Timothy Stone

February 16 at 8:35 AM · 🌐

Folks I posted a ugly post yesterday to which I have deleted and I kinda in a round about way directed it towards a certain person and I would like to apologize to everyone who read it that ugly for me to do that and yes I let Satan control me and I broke down and started drinking and when I was drunk I made that post and I'm sorry



5

10 comments

Like

Comment

Share

Most relevant



Amy Corey

When life gets hard you're supposed to call on God but when you're down the devil finds a way to get in and when you let him he will take control pray for you Tim because you have a beautiful granddaughter that loves you and so many more of the grandbabies that love you and you will get through this just let God help you 🙏!! I love you men and I am praying 🙏 for you hope you have a blessed day 🙏!!

Like Reply 1w



Bobbie Jo Blackwell

Why apologize for something that you really meant? You meant what you said. Apologies don't mean anything if you constantly do it.

Like Reply 1w



Timothy Stone

Bobbie Jo Blackwell I'm human I make mistakes and no I didn't mean it

Like Reply 1w



Bobbie Jo Blackwell

Timothy Stone apparently you did or you wouldn't of posted it for all to see

Like Reply 1w



Karen Smith

It is great that you apologized. You owe that to the person it was directed at and God. None of us can or should judge. I can however give you some suggestions. I remember when you posted about excepting Christ as your Savior, which I Praised God. We all need salvation. But when you are a babe in Christ, the devil will do all to get you back. But Greater is He who is in you then he that is in the world. So grab that Bible, cling to God's Holy word, leave and let go of that world you left behind and ask God to rebuke Satan. Find a daily devotional, find a Bible. God fearing preaching Church. Invest in the Love Dare 365 day devotional. My husband and I are doing it now. And please, we are all human, we will fail daily. But we need to kneel boldly before the Throne of God and give it all to him. And remember to stay off of social media when you aren't at your best. Prayers going up and out for you and your wife. Not preaching, just giving sound advise from someone who came through a life of misery to doing all I can to live for CHRIST. Hang in and hold on!!!!!! 🙏

Like Reply 1w



Timothy Stone

Karen Smith thanks and where can I find that devotional book?

Like Reply 1w



Bobbie Jo Blackwell

Karen Smith we are no longer together. I can't serve God and the devil both so I had to let go of what was keeping me from getting closer to God. You can't get to heaven holding on to someone else's skirt or shirt tail and think your going to make it. It's a relationship between you and God that will allow you to enter in. The wall with the Lord is straight and narrow and you've got to serve him with a whole heart and not just with half your heart or because your wife or your husband wants you to. It's something you have to do for yourself and nobody else.

Like Reply 1w



Karen Smith

Timothy Stone you can go on line and type in Love Dare devotion 365 day. But since I see y all are not together, I would still recommend it. I have found out that alot of things in it helps me personally and not just for my marriage. Prayers and may God's will be done!

Like Reply 1w



Karen Smith

Bobbie Jo Blackwell agreed and sorry to hear this. I was saved long before my husband and I were married. Had been through several bad relationships. So when I prayed to God to send me a husband like mine, if it be God's will, I made sure the day we got married I have this marriage to God. I myself could not do it on my own. It has had its ups and downs, but Praise God, it has lasted. Pray maybe it is some one for y'all. And if not, my prayer is God will bless you first for your walk with God and second that you will find happiness in the future. God be with you!

Like Reply 1w





Bobbie Jo Blackwell

Karen Smith thank you so much

Like Reply 1w

EXHIBIT F

(Affidavit of Tim Stone)

STATE OF SOUTH CAROLINA)

) AFFIDAVIT OF TIM STONE

COUNTY OF Colleton)

PERSONALLY appeared before me, Tim Stone, who being first duly sworn, deposes and states as follows:

1. I am the ex-husband of [REDACTED]
2. I did not post anything to the Facebook group Walterboro Word of Mouth between January 23, 2023, and March 2, 2023. I did not post anything on this social media page or my own Facebook social media page about [REDACTED] being a juror, that [REDACTED] “was talking way too much to friends and family about the case”, or that “Satan had gotten a hold of [me], and [I] had been drinking at the time [I] posted and was now very sorry”.
3. Nor did I post what is attached as Exhibit A, which has been represented to me to be an alleged post to the Walterboro Word of Mouth Facebook page and a Court exhibit in the State of South Carolina v. Richard Alexander Murdaugh trial.
4. I do not have a Facebook page set up as “Timothy Stone”. My profile name is “Tim Stone” and my Facebook page is [https://www.facebook.com/\[REDACTED\]](https://www.facebook.com/[REDACTED])
5. I was never contacted by law enforcement, the South Carolina Attorney General’s office, the clerk of court Becky Hill, or anyone at the Colleton County Clerk of Court’s office about Exhibit A or a post on the Walterboro Word of Mouth Facebook page concerning my ex-wife, [REDACTED].
6. I did not know [REDACTED] was on the Murdaugh jury until I heard her voice on a recording when she was being excused as a juror and she was discussing something about eggs.

FURTHER AFFIANT SAYETH NOT.


Tim Stone

August 18, 202~~2~~3

SWORN TO before me this 18 day
of August, 2023



Notary Public for South Carolina

My Commission Expires: July 25, 2032

Timothy's Post



Timothy Stone

February 16 at 8:35 AM · 🌐

I posted a ugly post yesterday to which I have deleted and I kinda in a round about way directed it towards a certain person and I would like to apologize to everyone who read it that ugly post to do that and yes I let Satan control me and I broke down and started drinking and when I was drunk I made that post and I'm sorry



5

10 comments

Like

Comment

Share

Most relevant



Amy Corey

When life gets hard you're supposed to call on God but when you're down the devil finds a way to get in and when you let him he will take control pray for you Tim because you have a beautiful granddaughter that loves you and so many more of the grandbabies that love you and you will get through this just let God help you 🙏!! I love you men and I am praying 🙏 for you hope you have a blessed day 🙏!!

Like Reply 1w



Bobbie Jo Blackwell

Why apologize for something that you really meant? You meant what you said. Apologies don't mean anything if you constantly do it.

Like Reply 1w



Timothy Stone

Bobbie Jo Blackwell I'm human I make mistakes and no I didn't mean it

Like Reply 1w



Bobbie Jo Blackwell

Timothy Stone apparently you did or you wouldn't of posted it for all to see

Like Reply 1w



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It is great that you apologized. You owe that to the person it was directed at and God. None of us can or should judge. I can however give you some suggestions. I remember when you posted about excepting Christ as your Savior which I Praised God. We all need salvation. But when you are a babe in Christ, the devil will do all to get you back. But Greater is He who is in you then he that is in the world. So grab that Bible, cling to God's Holy word, leave and let go of that world you left behind and ask God to rebuke Satan. Find a daily devotional, find a Bible God fearing preaching Church. Invest in the Love Dare 365 day devotional. My husband and I are doing it now. And please, we are all human we will fail daily. But we need to kneel boldly before the Throne of God and give it all to him. And remember to stay off of social media when you aren't at your best. Prayers going up and out for you and your wife. Not preaching, just giving sound advise from someone who came through a life of misery to doing all I can to live for CHRIST. Hang in and hold on!!!!!! 🙏

Like Reply 1w



Timothy Stone

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Like Reply 1w



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Like Reply 1w



Karen Smith |

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Like Reply 1w



Karen Smith

Bobbie Jo Blackwell agreed and sorry to hear this. I was saved long before my husband and I were married. Had been through several bad relationships. So when I prayed to God to send me a husband like mine, if it be God's will, I made sure the day we got married I gave this marriage to God. I myself could not do it on my own. It has had its ups and downs, but Praise God, it has lasted. Pray mayheart is not to late for y'all. And if it is, my prayer is God will bless you first for your walk with God and second that you will find happiness in the future. God be with you!

Like Reply 1w



Bobbie Jo Bladwell
Karen Smith thank you so much

Like Reply 1w

EXHIBIT G

(Affidavit of P. Barber)

STATE OF SOUTH CAROLINA)

COUNTY OF Richland

) AFFIDAVIT OF PHILLIP BARBER

PERSONALLY appeared before me, Tim Stone, who being first duly sworn, deposes and

1. I am an attorney in the firm of Richard A. Harpootlian, P.A., and counsel of record for Defendant Richard Alexander Murdaugh.
2. On August 18, 2023, I met with Tim Stone at his home. He provided his Facebook login information and allowed me to download a copy of all his Facebook activity from January 23, 2023, and March 2, 2023.
3. A true copy of the download is attached as **Exhibit A**.
4. The contents of the download speak for themselves, but review of them shows no post was made on February 16, 2023, apologizing for a previous post. There are no posts whatsoever to the Facebook group "Walterboro Word of Mouth."
5. Facebook's stated retention policy for deleted posts is 30 days, so any posts deleted in the period January 23, 2023, to March 2, 2023, would not be recoverable.

FURTHER AFFIANT SAYETH NOT.

Phillip Barber

September 4, 2023

SWORN TO before me this 4th day
of September, 2023

Notary Public for South Carolina

My Commission Expires:

EXHIBIT H

(Affidavit of Juror No. 785)

AFFIDAVIT OF [REDACTED] JUROR #785

PERSONALLY appeared before me, [REDACTED] who being first duly sworn, deposes

1. I was juror #785 in the case of *State of South Carolina v. Richard Alexander Murdaugh* tried in Colleton County, South Carolina.
2. During the presentation of the defense case, after President's Day but before Mr. Murdaugh testified in his own defense, Colleton County Clerk of Court Rebecca Hill told the jurors not to be "fooled by" the evidence presented to the jury by Mr. Murdaugh's attorneys.
3. In late February 2023, Ms. Hill questioned me about a Facebook post on the Walterboro Word of Mouth page. She summoned me to speak with her alone in an office in the courthouse. She told me someone emailed her about a post my ex-husband, Tim Stone, purportedly made, which purportedly stated that I made comments to him about the guilt or innocence of Mr. Murdaugh. She directly asked me whether I was inclined to vote guilty or not guilty. I told her I had not made up my mind and that I wanted to hear all the evidence before deciding.
4. Ms. Hill said the post said I had been drinking with my ex-husband, and that while drunk with him I expressed opinions on the guilt or innocence of Mr. Murdaugh. That never happened, and I told Ms. Hill it never happened. I did not go "drinking" with my ex-husband—in fact, I had not seen him in approximately ten years.
5. I asked to see the post, but Ms. Hill would not or could not show it to me. I have never seen it, and, to my knowledge, no one has.

6. Later that day, Ms. Hill told me SLED and Colleton County Sheriff's Office personnel went to my ex-husband's house, and he purportedly confirmed he made the post. She told me she would "reinstate" a restraining order I previously had against my ex-husband.
7. I did not know about the "apology" post referencing Satan until Ms. Hill's book was published. I have since reviewed that post and can definitely state the post is not by my ex-husband. He does not go by "Timothy," the profile picture is not him, and the phrasing of the post is not phrasing he would use. It appears to be a post by another person who happens to have the same name. It does not appear to be a post to the "Walterboro Word of Mouth" Facebook page.
8. When Ms. Hill first asked me about the Facebook posting purportedly made by my ex-husband, I showed her a picture of my ex-husband. For that reason, I now believe she always knew the "apology" post referencing Satan was not posted by my ex-husband.
9. On March 2, 2023—the day of the verdict—I received a call from my ex-husband, Tim Stone, as I was getting on the bus to travel with the rest of the jurors to the courthouse. I did not answer. This phone call upset me greatly and I asked to speak with the clerk of court, which I did by telephone using bailiff "Mr. Bill's" phone. I told her I was scared. She said that "the Murdaughs" probably "got to him."
10. Ms. Hill then again asked me questions about my opinion regarding Mr. Murdaugh's guilt. She asked if I was leaning one way or the other. I told her that Creighton Waters' closing was good, but I still had questions. She asked me what kind of questions and I replied, questions about the guns. She asked what would make me think he is innocent. I stated that no murder weapon was found. She then asked, "well, what makes you

think he's guilty?" I said Paul's video at the dog kennels. She then stated that everything Mr. Murdaugh has said has been lies and that I should "forget about the guns, they will never be seen again."

11. Ms. Hill then asked about the views of the rest of the jury. She told me if the foreperson would "just go in and ask for a raise in hands this would be over and done with." She said, "everyone needs to be on the same page." She then again said she would "reinstate" a restraining order I previously had against my ex-husband and that she would call Judge Newman about the restraining order.
12. I then went to the jury room. Approximately ten minutes later, I was excused from the jury. During the proceedings, I asked Judge Newman if he had spoken with the Clerk of Court. He only said this is not because of your ex-husband.
13. Two weeks later, I did answer a call from my ex-husband. I angrily confronted him about the post he purportedly made, because I knew I had not made the comments he claimed I made. He emphatically denied ever making any such Facebook post and genuinely seemed not to know what I was talking about.
14. On one day during my jury service, approximately one or two weeks before the verdict, [REDACTED] juror #864, and [REDACTED] juror #826 were in the single-toilet unisex bathroom together for an extended period. They were known to do so frequently to discuss the case. [REDACTED] juror #729, referred to it as "A and D" time.
15. In the van going to the courthouse, [REDACTED] juror #864, said Special Agent David Owen lied on the stand but that nothing would happen to him.
16. When we visited the Moselle crime scene, Ms. Hill and [REDACTED] juror #826, walked off together, avoiding other jurors in order to have a private conversation.

17. I own a rental property which is leased to two tenants, Deborah Webb and Clifford Dandridge. On Saturday, February 18, 2023, I delivered a refrigerator to the property.
18. I was removed from the jury on the day of the verdict because a co-worker of Ms. Webb purportedly said I expressed an opinion on Mr. Murdaugh's guilt or innocence while delivering the refrigerator. Ms. Webb then worked at Domino's Pizza in Walterboro, so the co-worker would be some employee of Domino's Pizza in Walterboro. I do not know whether Ms. Webb actually made any such statement at Domino's Pizza or whether a co-worker actually heard any such statement.
19. After I was dismissed from the jury, I spoke with Ms. Webb and Mr. Dandridge, who both vehemently stated to me and my husband that the affidavits the prosecution drafted for their signature was not what they said to him. They told me SLED showed up at their home at 10pm, after they were asleep, removed them from their home, put them in separate cars, and questioned them. Mr. Dandridge said he told them I did not say anything about Mr. Murdaugh's guilt or innocence. SLED returned 30 minutes later, again woke them from their beds, to serve subpoenas on them to appear in court the next day.
20. They arrived at the courthouse at 9am the next day, and were held for nine hours, until 6pm, when SLED officers or a prosecutor finally presented typed affidavits to them, saying they were their statements from the previous night that had been recorded by dashcams in the patrol cars. They said they signed the affidavits without reading them.
21. As I previously testified, I never discussed the merits of the Murdaugh case with Ms. Webb, Mr. Dandridge, or any other person present, nor did I express an opinion on Mr.

Murdaugh's guilt or innocence, while delivering the refrigerator or during any other interaction within them during the trial.

FURTHER AFFIANT SAYETH NOT.

Juror #785

August 13, 202~~2~~³

SWORN TO before me this 13 day
of August, 2023

Kevin A. Miller

Notary Public for South Carolina

My Commission Expires: July 25, 2032

EXHIBIT I

(Draft Transcript of Records Excerpt from *in camera* conference, February 28, 2023)

State of South Carolina) In the Court of General Sessions
County of Colleton) Fourteenth Judicial Circuit
2022-GS-15-0592
2022-GS-15-0593
2022-GS-15-0594
2022-GS-15-0595

The State of South Carolina,)
vs.) Transcript of Record
Richard Alexander Murdaugh.) **EXCERPT**
IN-CAMERA CONFERENCE:
JUROR 785
February 28, 2023

B E F O R E:

The Honorable Clifton Newman, Judge, and a jury.

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

Alan M. Wilson, Attorney General
Donald J. Zelenka, Deputy Attorney General
Samuel Creighton Waters, Senior Assistant Deputy AG
John B. Conrad, Assistant Attorney General
David A. Fernandez, Assistant Attorney General
Savannah M. Goude, Assistant Attorney General
Johnny E. James, Assistant Attorney General
John P. Meadors, Assistant Attorney General
Attorneys for the State

Richard A. Harpootlian, Esquire
James M. Griffin, Esquire
Phillip D. Barber, Esquire
Margaret N. Fox, Esquire
Attorneys for the Defendant

Elizabeth B. Harris, CVR-M-CM
Michael C. Watkins
Circuit Court Reporters

1 case?

2 JUROR: No.

3 THE COURT: Have you put anything on Facebook?

4 JUROR: Not regarding the case. I put a positive post
5 on -- I gave Ms. Becky my -- full access to my Facebook.
6 I've put positive posts on. I've done that for the past
7 three years, but.

8 THE COURT: Has anyone posted anything on Facebook
9 about you
10 and --

11 JUROR: I wasn't aware of it until Ms. Becky told me
12 today.

13 THE COURT: What did she tell me?

14 JUROR: She told -- she asked me if I had a ex-husband
15 and I said yeah. And she asked me if I had talked to him
16 about the case or being on jury duty, and I said no, and I
17 questioned her why she was asking me that. I haven't seen
18 my ex-husband since 2014.

19 THE COURT: Does he live in the area?

20 JUROR: He does now. He lives in Cottageville.

21 THE COURT: Okay.

22 JUROR: And I have three restraining orders against
23 him warning --

24 THE COURT: So, he's basically up to no good?

25 JUROR: I wouldn't say that. I'd say a lot worse, but

1 that's a nice way to put it.

2 THE COURT: Okay.

3 JUROR: But she told me that -- I was very upset after
4 she told me that. I have, like I said, I have three
5 restraining orders against him. I wouldn't have anything
6 to do with him if I didn't have a child with him, but I
7 haven't seen him since 2014 when we got a divorce. I have
8 talked to him within the last year because I got a call at
9 work that my son was in jail and needed a ride home. And I
10 did call his father and ask him to go get him, which he did
11 not do. But other than that, I have not seen him, talked
12 to him, or anything else since 2014 other than getting
13 restraining orders in Colleton County, one in Orangeburg
14 County, and I have one in Berkeley County.

15 THE COURT: Wow.

16 JUROR: But Ms. Becky said she had went to look for
17 the post again and that it had been deleted, and I don't
18 know who she talked to or anything else, but she said
19 apparently --

20 THE COURT: When did she tell you that?

21 JUROR: It was after you let us go on that last break.
22 I was very upset, and she came down and talked to me and
23 said that apparently -- I don't know who talked to him, but
24 said that he was drunk and he removed the post.

25 THE COURT: So, has she discussed the case with any of

1 -- any of the jurors? Has the clerk discussed anything
2 about the case with anyone on that jury?

3 JUROR: Not that I'm aware of.

4 THE COURT: Okay. She was just discussing with --

5 JUROR: She, she pulled me aside and when we went
6 downstairs after the last break -- I want to say it was
7 after lunch and we came back, that's when she first told me
8 about it. And then when we went back into court, I was
9 kind of screening the audience to make sure that my ex
10 wasn't out there. And she came downstairs after that break
11 and told me that she had found out that he was drunk and
12 made a drunk post, and I don't know what happened from
13 there. I have no clue.

14 THE COURT: And you work at the?

15 JUROR: I work at a monkey farm.

16 THE COURT: Monkey farm. What do you do there?

17 JUROR: I work in the lab, for the lab. All I do is
18 watch monkeys. It's a testing facility where they try and
19 come up with cures for, like, AIDS, cancer, leukemia.

20 THE COURT: You're happy to be here away from the
21 monkeys for a while?

22 JUROR: Yeah. I miss my monkeys.

23 THE COURT: Are they pretty smart as everyone says?

24 JUROR: They are very intelligent, and they hurt and
25 bleed and have feelings just like you or I do. They do.

1 THE COURT: Okay. At this point in time, have you
2 made up your mind as to guilt or innocence, though?

3 JUROR: I haven't. I was trying to wait on closing
4 arguments because those are usually pretty good.

5 THE COURT: You been on jury duty before?

6 JUROR: I was, but it kind of really sucked because
7 they called us back and we were, you know, anticipating --
8 it was my first jury, and they made up a agreement, and we
9 never ever got to sit on the jury.

10 THE COURT: Okay, any questions either -- for anyone
11 to ask?

12 MR. GRIFFIN: No, Your Honor.

13 MR. WATERS: No, sir.

14 THE COURT: Okay. If you will stand right inside --

15 JUROR: Follow her?

16 THE COURT: Follow her for a second.

17 Gabby, just right outside, inside the other door but
18 not all the way out.

19 (Juror 785 exited the room.)

20 THE COURT: All right, comments.

21 MR. GRIFFIN: Your Honor, I think that satisfies it,
22 and she hasn't talked to anybody. Hasn't expressed an
23 opinion and hasn't made up an opinion, and she's got an
24 ex-husband that she has three restraining orders against
25 him.

1 THE COURT: That's understandable. Have a good night.

2 JUROR: Thank you.

3 THE COURT: Okay.

4 JUROR: They are going to bring me back to my car,
5 right?

6 THE COURT: They didn't leave you, did they?

7 JUROR: Yes.

8 THE COURT: Oh, they did?

9 LAW CLERK: No. I'll go get her to a bailiff, and
10 they'll go get her. I'll go down there to a bailiff --

11 JUROR: They left.

12 LAW CLERK: -- and make sure they get her home.

13 (Break in proceedings.)

14 JUROR: Y'all have a good night.

15 THE COURT: Okay.

16 MR. GRIFFIN: Bye.

17 (Juror 785 exited the room.)

18 THE COURT: Well.

19 MR. WATERS: I got a name now.

20 THE COURT: A name, Clifford Dandridge, Bee Street.
21 Oh boy. I'm not too pleased about the clerk interrogating
22 a juror as opposed to coming to me and bringing it to me.

23 MR. GRIFFIN: I was surprised to hear that.

24 THE COURT: Yeah.

25 THE COURT: So.

EXHIBIT J

(Affidavit of H. Miller *re Juror No. 326*)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) AFFIDAVIT OF HOLLI MILLER

PERSONALLY appeared before me, Holli Miller, who being first duly sworn, deposes and states as follows:

1. On August 6, 2023, Dick Harpootlian, Jim Griffin and I met with [REDACTED] Juror #326 in the case of *State of South Carolina v. Richard Alexander Murdaugh*, and his mother at her home located at [REDACTED]
2. During the meeting, Juror #326 relayed the following information to us.
3. Juror #326 was asked if Ms. Hill told the jurors not to let the defense mislead them. He did not specifically recall this statement but he did recall that Ms. Hill commented to him and other jurors about the photos that would be admitted into evidence, indicating that the "images would be disturbing."
4. Juror #326 also stated that the jurors were stationed in two separate rooms when they were not in the courtroom, and that he was in a room with mostly other male jurors. He was not in the same room as Jurors #630, #741 and #785. Juror #326 stated that Ms. Hill would visit the other room more often and that he could not hear what she was telling the jurors in the other room.
5. During the trial Juror #326 and others discussed the case prior to deliberations. He did not discuss the case with anyone outside of the jurors. He further commented that some of the jurors were going into their office because of financial reasons and that "people were talking to coworkers because coworkers wanted info."
6. Before deliberations began, Juror #326 indicated that "minor conversation led him to know who was a yes and who was a no". His vote changed with new evidence.

7. As the jury was deliberating, the bailiff and Ms. Hill told the jurors that they could not take a smoke break during deliberations. There were six smokers on the jury.
8. After the trial concluded, a group chat was formed with the jurors, but Juror #326 dropped off of the group chat because there "were too many chats".
9. When asked if he thought the Clerk of Court Becky Hill was inserting herself in the process of the trial, Juror #326 responded, "I can see this."

FURTHER AFFIANT SAYETH NOT.


Holli Miller

September 1, 2023

SWORN TO before me this 1st day
of September, 2023

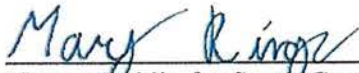

Notary Public for South Carolina
My Commission Expires: 6/27/33

EXHIBIT K

(Memorandum from Rebecca Hill, May 9,
2023)

To: [REDACTED] Dream Works aka Texas Crew Productions, LLC

From: Rebecca Hill, Colleton County Clerk of Court

Re: Addendum to Texas Crew Productions, LLC

May 9, 2023

Dear [REDACTED]

I'm looking forward to your upcoming docuseries on the Murdaugh case and I hope you'll be able to use some of my interview—should you choose to.

Because I am an elected official, we'll need to modify 3 clauses in the LOCATION agreement you presented me—as it relates to my authority.

Please change the word "Owner" to "Colleton County" in every reference in the agreement.

3-DATES and LOCATION FEE

Lowcountry Story, LLC agrees to pay the Colleton County Treasury a fee of \$1,000 PER day for use of the Colleton County Courthouse facilities, so as long as it does not supersede any court proceedings.

Payment will be made by the close of production.

10-MISCELLANEOUS

Colleton County, South Carolina can ONLY enter into a legal agreement for services if it is to be governed here in South Carolina, not New York. As an elected official, I have no authority outside of the State of South Carolina.

Sincerely, Rebecca Hill



Colleton County Clerk of Court

RHH Also, in exchange for the use of the likeness of Rebecca Hill in an interview, a minimum of .05 second video and audio clip will accompany the usage on the first reference.

The book cover for the book, "Behind The Doors of Justice: The Murdaugh Murders will be shown and audio will include Beckie's introduction as Clerk of Court for Colleton County and author of the book.

EXHIBIT L

(Affidavit of Timothy Stone)

STATE OF GEORGIA

COUNTY OF Wayne

)
) AFFIDAVIT OF TIMOTHY STONE
)

PERSONALLY appeared before me, Timothy Stone, who being first duly sworn, deposes and states as follows:

1. I am a resident of Odum, Georgia.
2. I am married to Bobbie Jo Stone (also known as Bobbi Joe Blackwell) and have been married since January 2022. I have never been married to anyone named [REDACTED]
3. I am not a member of the Facebook group Walterboro Word of Mouth and have never posted anything on this group's social media page.
4. I did not post what is contained in Exhibit A on the Facebook group Walterboro Word of Mouth. I did, however, post it on my personal Facebook page.
5. My Facebook page is [REDACTED]
6. The initial post on February 15, 2023 and the follow up post on February 16, 2023 had nothing to do with anyone associated with the State v. Murdaugh case. The February 15 post was in response to my wife's aunt "sticking her nose in my business". I felt terrible about the initial post and removed it on February 15 and on February 16 posted an apology which is still on my Facebook feed. See attached Exhibit B.
7. It appears that the post on my personal Facebook page differs slightly from that on Exhibit A in that my wife's comments as Bobbie Jo Blackwell have been deleted.

FURTHER AFFIANT SAYETH NOT.


Timothy Stone

September 12, 2023

SWORN TO before me this 12th day
of September, 2023



Maria C. Fulks
Notary Public for South Carolina
My Commission Expires: 7/29/2024

Exhibit A

Timothy's Post



Timothy Stone

February 16 at 8:35 AM · 🌐

Folks I posted a ugly post yesterday to which I have deleted and I kinda in a round about way directed it towards a certain person and I would like to apologize to everyone who read it that ugly for me to do that and yes I let Satan control me and I broke down and started drinking and when I was drunk I made that post and I'm sorry



5

10 comments

Like

Comment

Share

Most relevant



Amy Corey

When life gets hard you're supposed to call on God but when you're down the devil finds a way to get in and when you let him he will take control pray for you Tim because you have a beautiful granddaughter that loves you and so many more of the grandbabies that love you and you will get through this just let God help you 🙏!! I love you men and I am praying 🙏 for you hope you have a blessed day 🙏!!

Like Reply 1w



Bobbie Jo Blackwell

Why apologize for something that you really meant? You meant what you said. Apologies don't mean anything if you constantly do it.

Like Reply 1w



Timothy Stone

Bobbie Jo Blackwell I'm human I make mistakes and no I didn't mean it

Like Reply 1w



Bobbie Jo Blackwell

Timothy Stone apparently you did or you wouldn't of posted it for all to see

Like Reply 1w



Karen Smith

It is great that you apologized. You owe that to the person it was directed at and God. None of us can or should judge. I can however give you some suggestions. I remember when you posted about excepting Christ as your Savior which I Praise God. We all need salvation. But when you are a babe in Christ, the devil will do all to get you back. But Greater is He who is in you than he that is in the world. So grab that Bible, cling to God's Holy word, leave and let go of that world you left behind and ask God to rebuke Satan. Find a daily devotional, find a Bible God fearing preaching Church. Invest in the Love Dare 365 day devotional. My husband and I are doing it now. And please, we are all human we will fail daily. But we need to kneel boldly before the Throne of God and give it all to him. And remember to stay off of social media when you aren't at your best. Prayers going up and out for you and your wife. Not preaching, just giving sound advice from someone who came through a life of misery to doing all I can to live for CHRIST. Hang in and hold on!!!!!! 🙏

Like Reply 1w



Timothy Stone

Karen Smith thanks and where can I find that devotional book

Like Reply 1w



Bobbie Jo Blackwell

Karen Smith we are no longer together. I can't serve God and the devil both so I had to let go of what was keeping me from getting closer to God. You can't get to heaven holding on to someone else's skirt or shirt tail and think your going to make it. It's a relationship between you and God that will allow you to enter in. The wall with the Lord is straight and narrow and you've got to serve him with a whole heart and not just with half your heart or because your wife or your husband wants you to. It's something you have to do for yourself and nobody else.

Like Reply 1w



Karen Smith

Timothy Stone you can go on line and type in Love Dare devotion 365 day. But since I see y'all are not together, I would still recommend it. I have found out that alot of things in it helps me personally and not just for my marriage. Prayers and may God's will be done!

Like Reply 1w



Karen Smith

Bobbie Jo Blackwell agreed and sorry to hear this. I was saved long before my husband and I were married. Had been through several bad relationships. So when I prayed to God to send me a husband like mine, if it be God's will, I made sure the day we got married I gave this marriage to God. I myself could not do it on my own. It has had its ups and downs, but Praise God, it has lasted. Pray maybe it is not too late for y'all. And if it is, my prayer is God will bless you first for your walk with God and second that you will find happiness in the future. God be with you!

Like Reply 1w





Bobbie Jo Blackwell
Karen Smith thank you so much

Like **Reply** 1w

Exhibit B



Search Facebook



February 22

Learn More

January 20

January 22



Timothy Stone

128 friends

[Add friend](#)

[Message](#)



[Posts](#)

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[More](#)



Learn More

Intro



Works at Dopson all terrain timber



Studied at Jeff Davis High School



Went to Jeff Davis High School

January 21

Posts

[Filters](#)



Timothy Stone

February 27 · 🌐

Fixing to delete Facebook I'll leave messenger on for a few days for certain ones to get my new number later Facebook world



2

Photos

[See all photos](#)



Friends

128 friends

[See all friends](#)



Bobbie Jo Stone

Jean Woods

Shelby Batten

 **Stitch Lovers**
February 16 · 🌐

👍 Like

💬 Comment

➦ Share



Write a comment...



Timothy Stone updated his profile picture
February 16 · 🌐

...



👍❤️ 9

➦ Share



Timothy Stone
February 16 · 🌐

...





Search Facebook



Timothy Stone

Friends

128 friends

[See all friends](#)



Bobbie Jo Stone



Jean Woods



Shelby Batten



Kaitlyn Graham



Matthew Finch



Billie Jean Blackwell Sloan



Timothy Stone



William Sloan



Billy Blackwell

Life events

[See all](#)



Like

Comment

Share



Write a comment...



Timothy Stone

February 15 · 🌐

Folks I posted a ugly post yesterday to which I have deleted and I kinda in a round about way directed it towards a certain person and I would like to apologize to everyone who read it that ugly for me to do that and yes I let Satan control me and I broke down and started drinking and when I was drunk I made that post and I'm sorry



5

5 comments

Like

Comment

Share

[View more comments](#)



Karen Smith

It is great that you apologized. You owe that to the person it was directed at and God. None of us can or should judge. I can however give you some suggestions. I remember when you posted about excepting Christ as your Savior, which I Praised God. We a... [See more](#)

Like Reply 29h

→ Karen Smith replied · 3 Replies



Write a comment...



Timothy Stone

February 16 · 🌐

For my mom and sister

NEVER
FORGOTTEN

Timothy's Post



Timothy Stone

February 16 · 🌐



Folks I posted a ugly post yesterday to which I have deleted and I kinda in a round about way directed it towards a certain person and I would like to apologize to everyone who read it that ugly for me to do that and yes I let Satan control me and i broke down and started drinking and when I was drunk I made that post and I'm sorry



5

5 comments



Like



Comment



Share

Most relevant ▾



Amy Corey

When life gets hard you're supposed to call on God but when you're down the devil finds a way to get in and when you let him he will take control pray for you Tim because you have a beautiful granddaughter that loves you and so many more of the grandbabies that love you and you will get through this just let God help you 🙏!!! I love you men and I am praying 🙏 for you hope you have a blessed day 🙏!!!

Like Reply 28w



Karen Smith

It is great that you apologized. You owe that to the person it was directed at and God. None of us can or should judge. I can however give you some suggestions. I remember when you posted about excepting Christ as your Savior, which I Praised God. We all need salvation. But when you are a babe in Christ, the devil will do all to get you back. But Greater is He who is in you then he that is in the world. So grab that Bible. cling to God's Holy word, leave and let go of that world you left behind and ask God to rebuke Satan. Find a daily devotional, find a Bible, God fearing preaching Church. Invest in the Love Dare 365 day devotional. My husband and I are doing it now. And please, we are all human, we will fail daily. But we need to kneel boldly before the Throne of God and give it all to him. And remember to stay off of social media when you aren't at your best. Prayers going up and out for you and your wife. Not preaching, just giving sound advise from someone who came through a life of misery to doing all I can to live for CHRIST. Hang in and hold on!!!!!!! 🙏

Like Reply 28w

Timothy's Post

X



Karen Smith

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Like Reply 29w



Timothy Stone

Karen Smith thanks and where can I find that devotional book

Like Reply 29w



Karen Smith

Timothy Stone you can go on line and type in Love Dare devotion 365 day. But since I see y'all are not together, I would still recommend it. I have found out that alot of things in it helps me personally and not just for my marriage. Prayers and may God's will be done!

Like Reply 29w



Karen Smith

Bobbie Jo Blackwell agreed and sorry to hear this. I was saved long before my husband and I were married. Had been through several bad relationships. So when I prayed to God to send me a husband like mine, if it be God's will, I made sure the day we got married I have this marriage to God. I myself could not do it on my own. It has had its ups and downs, but Praise God, it has lasted. Pray maybe it is not to late for y'all. And if it is, my prayer is God will bless you first for your walk with God and second that you will find happiness in the future. God be with you!

Like Reply 29w

February 23

More

February 20

February 22

More

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

) IN THE COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
)

The State of South Carolina,

Plaintiffs,

vs.

Richard Alexander Murdaugh,

Defendant.

Indictment Nos. 2022GS1500592 – 00595

CERTIFICATE OF SERVICE

I, Holli Miller, paralegal to the attorney for the Defendant, Richard A. Harpootlian, P.A., with offices located at 1410 Laurel Street, Columbia, South Carolina 29201, hereby certify that on October 27, 2023 did serve via email the following document to the below mentioned person:

Document: Motion for a new trial

Served: Creighton Waters, Esquire
Office of The Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia South Carolina 29211-1549
cwaters@scag.gov


Holli Miller

OCT 27 2023 AM 10:14
COLLETON CO GS, REBECCA H. HILL

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT C

(Juror 741 Affidavit)

Jan 29 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF
COUNTY OF COLLETON) JUROR #741

PERSONALLY appeared before me, [REDACTED] who being first duly sworn, deposes and states as follows:

1. I was juror #741 in the case of *State of South Carolina v. Richard Alexander Murdaugh* tried in Colleton County, South Carolina. I was an alternate juror.
2. During the trial, I witnessed the clerk of court, Becky Hill, come to the jury room and she and the forewoman went into the bathroom. After Mrs. Hill and the forewoman exited the bathroom, she told the jurors that we could not ask the forewoman questions.
3. Before the defense put up their case, Mrs. Hill told the jurors "the defense is about to do their side, they are going to say things that will try to confuse you, don't let them confuse you or convince you or throw you off."
4. Mrs. Hill made the above statement warning that the defense would try to confuse us in the presence of all of the jurors, as we had assembled in the same jury room.
5. Mrs. Hill said, "if you get emotional, we want to see your face, because that is what they want to see." All jurors were assembled in one room when she made this comment as well.
6. Mrs. Hill also informed us that Alex Murdaugh was going to testify but I don't recall exactly what she said. All jurors were assembled in one room when she made this comment as well.

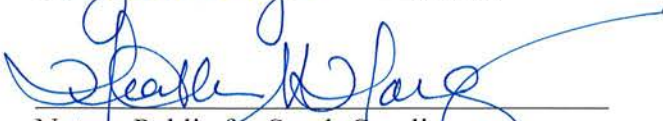
7. During the visit to Moselle, Juror #826 and I walked to the scene together. Then Juror #826 began walking with the Clerk of Court, Becky Hill. I could tell they were talking, but I could not hear what was said between them.
8. I also overheard discussions in the jury room that Mrs. Hill drove a juror home. I believe it was the juror whose nickname was [REDACTED]
9. Before the jury began deliberating, I heard a member of the Court staff say that the deliberations shouldn't take long. I don't remember specifically who made this statement, but it was made in the presence of the entire jury right after closing arguments in the jury room.
10. As the jury was deliberating, I believe Judge Newman came to the room I was in and told me the jury would have to spend the night at a hotel if they did not have a vote by a certain time. I do not recall the time deadline.

FURTHER AFFIANT SAYETH NOT.

[REDACTED]
[REDACTED] Juror #741

January 29, 2024

SWORN TO before me this 29 day
of January, 2024


Notary Public for South Carolina
My Commission Expires: 11/24/2030

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT D

(Appellant's Brief)

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

State of South Carolina,

v.

Richard Alexander Murdaugh,

Defendant.

**COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

Indictment Nos. 2022-GS-15-00592, -593,
-594, and -595

**DEFENDANT'S PRE-HEARING BRIEF
RE: MOTION FOR A NEW TRIAL**

Defendant Richard Alexander Murdaugh, through undersigned counsel hereby submits this pre-hearing brief as the Court requested at the December 21, 2023, telephonic status conference.

I. Introduction

Mr. Murdaugh was indicted for the murder of his wife Maggie and son Paul on July 14, 2022. His murder trial began January 23, 2023. The presiding judge was the Honorable Clifton Newman. The trial ran for six weeks, ending with convictions on the evening of March 2, 2023, and sentencing on March 3, 2023.

On October 27, 2023, Mr. Murdaugh filed a motion for a new trial based on after-discovered evidence, having obtained leave from the Court of Appeals to suspend his appeal of his convictions to file the motion. His motion alleges that Rebecca Hill, the elected Clerk of Court for Colleton County, had extensive private communications with members of the jury during trial. This allegation was supported by sworn affidavits of jurors and a witness to juror interviews, testimony at *in camera* proceedings, and other evidence including Ms. Hill's own book. The subject matter of Ms. Hill's alleged communications was the evidence being presented by the defense at trial. Mr. Murdaugh alleges that an elected state official deliberately violated his constitutional right to a fair trial before an impartial jury. If that allegation is proven, the law requires a new trial.

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S.C. SUPREME COURT

II. Argument

A. **Mr. Murdaugh does not need to show actual bias on the part of any juror to obtain a new trial.**

If Mr. Murdaugh proves his allegation that Ms. Hill communicated with the jury about the evidence presented by the defense during his murder trial, South Carolina and federal law require that Mr. Murdaugh receive a new trial, irrespective of whether the Court believes the outcome of the trial would have been the same had Ms. Hill's jury tampering not occurred. "A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influence." *State v. Johnson*, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990) (internal quotation marks omitted). Where "[t]here was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained . . . 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." *State v. Cameron*, 311 S.C. 204, 207–08, 428 S.E.2d 10, 12 (Ct. App. 1993) (quoting *Holmes v. United States*, 284 F.2d 716, 718 (4th Cir. 1960)) (emphasis added). The law requires the "subject matter" of the communication to be harmless— "clearly" harmless. *Id.* Otherwise, a new trial must be granted. Asking the jury what it wants for lunch is clearly harmless. Telling it not to believe the defendant when he testifies is not.

The issue before the Court is a structural issue in Mr. Murdaugh's trial, not a failure to impanel unbiased jurors. Where a new trial is sought based on biases jurors brought with them into the trial, the required standard is to show actual bias, whether those biases were facts jurors concealed during voir dire (*e.g.*, *State v. Woods*, 345 S.C. 583, 550 S.E.2d 282 (2001)), were created by state action during voir dire (*e.g.*, *State v. Bryant*, 354 S.C. 390, 581 S.E.2d 157 (2003)),

resulted from jurors reading newspapers or other unauthorized materials during trial (*e.g.*, *State v. Stone*, 290 S.C. 380, 350 S.E.2d 517 (1986)) or from initiating inappropriate communications during trial (*e.g.*, *Smith v. Phillips*, 45 U.S. 209 (1982)), or the like. The present case is different. Here, a state official argued the merits of the evidence presented to jurors during trial outside of the presence of the Court, the Defendant, and his counsel, and in other ways deliberately and surreptitiously used her official authority to direct the verdict to her preferred outcome. This is, fortunately, a vanishingly rare event, but it is one that requires a new trial.

The *Cameron* court’s distinction between the communication being harmless and the subject matter of the communication being harmless and its requirement that a new trial be granted unless the latter is established recognizes that deliberate jury tampering by a court official cannot be cured or excused by the strength of the evidence presented at trial or jurors offering their own subjective opinions regarding their own biases. Even if every juror were to testify that he or she would have reached the same verdict regardless of Ms. Hill’s tampering, a new trial is required if it is proven that Ms. Hill communicated with jurors about the merits of the evidence presented. Sustaining a conviction based on the Court’s opinion of the strength of the evidence against the accused regardless of improper external influences on the jury from court officials about the merits of the case would effectively be a directed verdict for the prosecution—a statement that whatever happened at trial simply does not matter because the evidence can admit only one result regardless. That would constitute structural error. *Cf. Neder v. United States*, 527 U.S. 1, 34 (1999) (Scalia, J., concurring in part) (noting that even if “the judge certainly reached the ‘right’ result,” “a directed verdict against the defendant . . . would be *per se* reversible *no matter how overwhelming the unfavorable evidence*,” because “[t]he very premise of structural-error review is that even

convictions reflecting the ‘right’ result are reversed for the sake of protecting a basic right” (emphasis in original)).

For example, in *Parker v. Gladden*, a bailiff told a juror in a murder trial “that wicked fellow, he is guilty.” 385 U.S. 363, 363 (1966). The Supreme Court of Oregon held the statement did not require a new trial because it was not shown the statement prejudiced the outcome of the trial. The U.S. Supreme Court reversed, holding “[t]he evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel,” and “[w]e have followed the undeviating rule, that the rights of confrontation and cross-examination are among the fundamental requirements of a constitutionally fair trial.” *Id.* at 364–65 (internal quotation marks and citations omitted).

In *Parker*, the state also argued that the bailiff’s statement was harmless because ten members of the jury never heard his statement and Oregon law at that time allowed a guilty verdict by ten affirmative votes of the twelve jurors. The Supreme Court rejected that reasoning, and, after questioning whether the factual record supported that argument, stated that in “any event, petitioner was entitled to be tried by 12, not 9 or even 10, impartial and unprejudiced jurors.” *Id.* at 366. That reasoning accords with the reasoning in *Cameron* 27 years later—the right being protected is not the right to a “correct” verdict but the constitutional right to trial before a fair and impartial jury free from state officials’ improper influences. What matters is what was in fact said to the jurors by the state official, not a counterfactual analysis of what probably would have happened had that not in fact been said.

Our Supreme Court more recently touched on this point in *State v. Green*, 432 S.C. 97, 851 S.E.2d 440 (2020). In *Green*, during jury deliberations a juror asked a bailiff “what would happen

in the event of a deadlock, and he responded the judge would likely give them an *Allen* charge and ask if they could stay later.” *State v. Green*, 427 S.C. 223, 229, 830 S.E.2d 711, 713 (Ct. App. 2019), *aff’d as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020) (citation omitted). The Court of Appeals held the bailiff’s comments were presumptively prejudicial because of his official position, but that the State rebutted that presumption by showing for various reasons that the remark did not in fact influence the outcome of the jury’s deliberations. *Id.* at 236, 830 S.E.2d at 717. The Supreme Court affirmed but modified the decision to correct the Court of Appeals’ reasoning. The communication was not prejudicial not because it did not in fact change the verdict, instead, it was not prejudicial because the subject matter of the communication was harmless: “The bailiff’s actions here—though improper—did not touch the merits, but dealt only with the procedural question of how the judge might handle a jury impasse that apparently never materialized.” *Green*, 432 S.C. at 100, 851 S.E.2d at 441. In other words, a bailiff presuming to tell the jury that if it is deadlocked, the judge will instruct them to keep deliberating is improper but likely harmless because the subject matter is procedural or logistical, rather than to the merits of the case.

Of course, the allegations in the instant motion—that a state official told the jury not to believe the defendant’s defense or his testimony when he testified in his own defense—indisputably regard the merits of the case. The extensive, deliberate, and self-interested jury tampering in which Ms. Hill allegedly engaged far exceeds the simple bailiff mistakes that forced a retrial in *Cameron*, where “a bailiff’s misleading response to a juror’s question about sentencing options compromised the jury’s impartiality because it left the impression that their verdict could not affect the trial court’s sentencing discretion,” or in *Blake by Adams v. Spartanburg General Hospital*, where a bailiff told a juror “that the trial judge ‘did not like a hung jury, and that a hung

jury places an extra burden on taxpayers.’” See *State v. Green*, 427 S.C. at 237, 830 S.E.2d at 717–18 (citing 311 S.C. at 208, 428 S.E.2d at 12 and quoting 307 S.C. 14, 16, 413 S.E.2d 816, 817 (1992)).

B. The State misstates the controlling legal standard and provides no authority supporting its mistaken position.

In response to Mr. Murdaugh’s motion for a new trial, the State incorrectly asserts that Murdaugh “must show both that the alleged improper communications occurred and that jurors were actually biased as a result.” Resp. Opp’n Mot. New Trial 3 n. 2. The State can cite no authority supporting that proposition. The State’s response includes citations to several cases purportedly supporting its position, but not one cited case actually supports it.

State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998): The State provides no parenthetical explanation of how *Kelly* supports its position because the case has nothing to do with the present motion. In *Kelly*, a juror was accused of misconduct, not a court official. During the guilt phase of a capital trial, a juror provided a pamphlet purportedly expressing God’s views on capital punishment to other jurors in the jury room. The trial judge dismissed the offending juror but determined that a mistrial was not warranted because it was not relevant to the issues in the guilt phase of the trial and because “no other juror had been exposed to the contents of this pamphlet.” *Id.* at 141, 502 S.E.2d at 104. The Supreme Court affirmed. Chief Justice Finney and Justice Toal dissented, arguing “the inappropriate possession and use of the extraneous pamphlet by jury members so tainted the jury that its contents affected the ability of the jury to be fair and impartial at both the guilt and penalty phases of appellant’s bifurcated trial.” *Id.* at 150, 502 S.E.2d at 109. Regardless, as in the *Holmes* case that provides the controlling legal standard quoted in *Cameron*,

Here there is more than jury misconduct in reading forbidden matter. There was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained. When there has been such a communication, 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.

Holmes, 284 F.2d at 718 (emphasis added).

Smith v. Phillips, 45 U.S. 209 (1982): This case says nothing about the standard for granting a new trial when a state official tampers with the jury. In *Smith*, the prosecution failed to disclose that a juror had, during trial, applied for employment as an investigator in the prosecutor's office. The U.S. Supreme Court held "[t]his 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," and agreed with the state courts and federal district court that no actual bias was proven at the hearing. *Id.* 455 U.S. at 214–15. It reversed the U.S. Court of Appeals for the Second Circuit on the issue of whether the prosecution's failure to disclose the letter was misconduct necessitating a new trial. But the issue in the instant motion is not whether a particular juror had an undisclosed bias or whether the prosecution concealed any pertinent information.

State v. Green, 432 S.C. 97, 851 S.E.2d 440 (2020): As explained above, in *Green* the Court held that an improper procedural comment by a bailiff to a jury was harmless because it did not bear on the merits. 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. Any such assertion would be precluded by the U.S. Supreme Court's holding *Parker v. Gladden*, discussed above but notably not mentioned at in the State's response despite also being discussed in Mr. Murdaugh's initial motion. The *Green* court did reasonably decline to extend the presumption in *Remmer v. United States* that "any private communication, contact, or tampering . . . with a juror during a trial about the matter pending before the jury is . . . deemed presumptively prejudicial" to situations where the communications at issue "did not touch the merits" of the case on trial. *Id.* at 99–100, 851 S.E.2d at 441 (quoting 347 U.S. 227 (1954)). Instead, it reversed the Court of Appeals application of

Remmer prejudice and instead followed the reasoning of *Cameron*: the inquiry should focus on the subject matter of the improper communication rather than presuming all improper communications are prejudicial and then requiring the State to rebut the presumption even where the communications did not bear on the merits of the case. *Id.* at 99–101, 851 S.E.2d at 441. This has no relevance here because Ms. Hill’s alleged statements to jurors indisputably bore on the merits.

State v. Cameron, 311 S.C. 204, 428 S.E.2d 10 (Ct. App. 1993): The State cites *Cameron* for the unremarkable proposition “[n]ot every inappropriate comment by a member of court staff to a juror rises to the level of constitutional error,” Resp. Opp’n Mot. New Trial 3, but in a footnote claims Mr. Murdaugh’s citations to *Cameron* for the controlling legal standard cite to a “portion of the opinion which does not state the legal standard, but rather quotes a portion of a 4th Circuit Court of Appeals opinion inconsistent with the standard acknowledged by *Cameron* and more subsequently clarified in *Smith* and most recently in *Green*,” *id.* at 3 n.2. That assertion only makes sense if the State did not expect the Court to read the *Cameron* opinion. The entire portion of the *Cameron* opinion that follows its factual recitation is quoted below:

The trial judge ruled that the jury properly decided that the length of sentence he might impose was not their concern. He further ruled that the short colloquy between the bailiff and the forelady could not have in any way influenced the jury to refuse to recommend mercy.

A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature. *State v. Johnson*, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990); *State v. Wasson*, 299 S.C. 508, 511, 386 S.E.2d 255, 256 (1989); *State v. Salters*, 273 S.C. 501, 504, 257 S.E.2d 502, 504 (1979). The mere fact, however, that some conversation occurred between a juror and a court official would not necessarily prejudice a defendant. *State v. Goodwin*, 250 S.C. 403, 405, 158 S.E.2d 195, 197 (1967).

In this case, “[t]here was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained. When there has been such a communication, 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.” *Holmes v. United States*, 284 F.2d 716, 718 (4th Cir. 1960); see *Blake v. Spartanburg General Hospital*, 307 S.C. 14, 413 S.E.2d 816 (1992).

While the trial court adequately instructed the jury on the verdicts of guilty with and without mercy, the jury was obviously confused as to the length of the respective sentences. In this case, the right to fix punishment or make a recommendation that would place punishment in the discretion of the court rested exclusively with the jury. *State v. Brooks*, 271 S.C. 355, 359, 247 S.E.2d 436, 438 (1978); *State v. McGee*, 268 S.C. 618, 620, 235 S.E.2d 715, 716 (1977). The bailiff’s response to the forelady, that they should not worry if they were deadlocked because the judge was fair, was misleading. It tended to lessen the jury’s sense of responsibility by implying that if they rendered a verdict of guilty without mercy, the judge had some discretion in sentencing. “Jurors are simply not to consider the opinions of neighbors, officials or even other juries.” *State v. Thomas*, 287 S.C. 411, 413, 339 S.E.2d 129, 129 (1986) (quoting *State v. Smart*, 278 S.C. 515, 526, 299 S.E.2d 686, 693 (1982), *cert. denied*, 460 U.S. 1088, 103 S. Ct. 1784, 76 L. Ed.2d 353 (1983)).

The appellant’s conviction is reversed and the case is remanded for a new trial.

REVERSED AND REMANDED.

311 S.C. at 205–08, 428 S.E.2d at 11–12. There is no standard “acknowledged” or otherwise stated in the above opinion other than “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.” Mr. Murdaugh has no idea what “*Smith*” case the State believes “more subsequently clarified” the legal standard. The only “*Smith*” case cited in the State’s response is *Smith v. Phillips*, the irrelevant 1982 U.S. Supreme Court case discussed above that predated *Cameron* by eleven years. And as discussed above, *Green* reversed a Court of Appeals decision to correct its reasoning to bring it in line with *Cameron*.

C. The applicable standard of proof is a preponderance of the evidence.

As the movant, Mr. Murdaugh has the burden of proving his claim for relief. Although no South Carolina case states the standard of proof applicable in this situation, the general rule for new trial motions based on unauthorized communications with jurors is that the standard of proof

is a preponderance of the evidence. Mr. Murdaugh must make “two showings, by a preponderance of the evidence: [1] [extrajudicial] contact or communications between jurors and unauthorized persons occurred, and [2] the contact or communications pertained to the matter before the jury.” *E.g., State v. Berrios*, 129 A.3d 696, 713 (Conn. 2016) (quoting *Ramirez v. State*, 7 N.E.3d 933, 939 (Ind. 2014)). As discussed above, the burden-shifting described in *Remmer* is not relevant to this case because the alleged communications were by a court official, to at least one deliberating juror, and inarguably pertained to the merits of the case being tried. If Mr. Murdaugh proves that the Clerk of Court engaged in surreptitious advocacy on the merits during trial, there is nothing for the State to rebut. A new trial is required.

D. The Court must hold an evidentiary hearing.

The State’s response argues Mr. Murdaugh has failed to show that he is entitled to an evidentiary hearing. Resp. Opp’n Mot. New Trial 19–21. The Court appears to have rejected that argument already because it has set dates for the evidentiary hearing. Nevertheless, because the State made the argument, Mr. Murdaugh will briefly rebut it. As the State correctly argued before the Court of Appeals, the standard to suspend the direct appeal and for leave to file a motion for a new trial is a *prima facie* showing of an entitlement for relief. Return to Motion to Suspend Appeal and for Leave to File Motion for New Trial, *State v. Murdaugh*, Appellate Case No. 2023-000392 (Sept. 15, 2023) (citing *State v. Butler*, 261 S.C. 355, 358, 200 S.E.2d 70, 71 (1973)). Mr. Murdaugh agreed that is the correct standard. Reply to the State’s Return, *Murdaugh*, Appellate Case No. 2023-000392 (Sept. 21, 2023) (quoting *State v. Ford*, 301 S.C. 485, 491, 392 S.E.2d 781, 784 (1990) (“In order to obtain leave from this Court to move for a new trial based on after-discovered evidence, an appellant must make a *prima facie* showing that a new trial is warranted.”)). The Court of Appeals concluded that standard was satisfied when it granted the motion to suspend the appeal and for leave to file the instant motion. Order, *Murdaugh*, Appellate Case No. 2023-

000392 (Oct. 17, 2023). There has been no material change to the law or to the record before the Court (other than the discovery of yet more examples of Ms. Hill’s dishonesty and malfeasance in office) since the Court of Appeals’ order. It therefore is the law of the case that a prima facie case has been made. *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) (“The doctrine of the law of the case prohibits issues [that] have been decided in a prior appeal from being relitigated in the trial court in the same case.”). Where a prima facie case is made, an evidentiary hearing is required. *Barnes v. Joyner*, 751 F.3d 229, 242 (4th Cir. 2014) (“[W]hen the defendant presents a credible allegation of communications or contact between a third party and a juror concerning the matter pending before the jury” the defendant has an “entitlement to an evidentiary hearing.” (citing *Remmer*, 347 U.S. 227)). The Court therefore must hold an evidentiary hearing on the merits of the motion for a new trial.

E. The State’s motions to strike should be denied.

In its response to the motion for a new trial, the State moves to strike (1) affidavits of paralegal Holli Miller, (2) any statements regarding jury deliberations, and (3) any claims regarding Facebook posts, Ms. Hill’s book deal, or “post-trial media interactions.” It is unclear what purpose striking anything from the motion for a new trial would accomplish, given that it is the law of the case that a prima facie case has been made, that an evidentiary hearing therefore is required, that an evidentiary hearing has been scheduled, and that the motion will be decided on the evidence presented to the Court at the hearing and not on attorney argument made before the Court receives any evidence whatsoever. Nevertheless, since the State makes the argument, Mr. Murdaugh will briefly rebut it.

First, the affidavits of Holli Miller were offered only as evidence as to what certain jurors would say if called to testify at an evidentiary hearing. Of course, they are hearsay. All affidavits from persons who have not (yet) testified in court are hearsay. Rule 801(c), SCRE (“‘Hearsay’ is

a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”). Hearsay is just an objection to the admissibility of evidence; it is not a basis to strike a filing. The purpose of Ms. Miller’s affidavits was to help obtain an evidentiary hearing, which has been accomplished. Obviously, they cannot prove Mr. Murdaugh’s is entitled to a new trial. Witness testimony in a courtroom will do that.

Second, there is no basis for the State’s motion to strike references to jury deliberations. Juror 630’s affidavit was freely given to support a public filing. Other jurors have spoken about the deliberations in national television interviews. Such statements may or may not be admissible as evidence at the merits evidentiary hearing, but Rule 606 of the South Carolina Rules of Evidence in no way supports striking public statements from a motion memorandum.

Third, the State correctly notes that the only relevance of the Facebook post Ms. Hill fabricated to remove Juror 785, her book plans, or her other post-trial actions, is to impeach Ms. Hill. The State argues attacking Ms. Hill’s character is “an outlandish theory” against “a dedicated public servant” that is “Immaterial, Impertinent, and Scandalous” and so should be struck. That is incorrect. Ms. Hill likely is the only witness the State can offer who can directly contradict Juror 630’s averments of jury tampering, and Ms. Hill has offered an affidavit doing exactly that. Resp. Opp’n Mot. New Trial Ex. A. Her credibility is the crux of the matter before the Court. The purpose of the evidentiary hearing is to allow the Court to decide whether it believes the word of Ms. Hill more than it believes the sworn testimony of one or more jurors. Anything that impeaches Ms. Hill is relevant. And the State’s rhetoric about Ms. Hill being “a dedicated public servant” unfairly maligned has not aged well in the two months since the State filed its response, to put it mildly. Ms. Hill is alleged to have stolen money, illegally sold access to the courthouse, conspired

with her son to conduct illegal wiretaps, and even had her book removed from publication because of her plagiarism.

F. To prevail, Mr. Murdaugh must prove by a preponderance of the evidence that Ms. Hill made statements to at least one deliberating juror about the merits of the evidence presented at trial.

The issue presented to the Court is not what happened during jury deliberations. It is what happened during the presentation of evidence at trial. Mr. Murdaugh anticipates at least one deliberating juror will testify that Ms. Hill advocated against Mr. Murdaugh in improper communications to jurors during trial, and that at least two other persons who were part of the jury at the time will corroborate that testimony. Such communications include telling jurors not to be “misled” by evidence presented in Mr. Murdaugh’s defense and not to be “fooled by” Mr. Murdaugh’s testimony in his own defense. Based on the chart of juror interviews provided in the State’s response to the motion for a new trial (at pages 21–22), at least five jurors (including the dismissed juror and alternate) will testify that Ms. Hill told jurors to watch Mr. Murdaugh’s body language when he testified. Mr. Murdaugh also anticipates juror testimony that Ms. Hill asked jurors for their opinions about Mr. Murdaugh’s guilt or innocence, that she pressured jurors to reach a quick verdict, telling them from the outset of their deliberations that it “shouldn’t take them long,” and that she had frequent private conversations with the jury foreperson. It is likely several jurors will testify that they never heard any such jury tampering and that they do not believe it occurred. But that is not a direct contradiction of the testimony of jurors who say they saw and heard it. Mr. Murdaugh anticipates the only person who can directly contradict jurors who witnessed Ms. Hill’s jury tampering is Ms. Hill.

Mr. Murdaugh therefore must present evidence corroborating Juror 630’s testimony, including testimony from the alternate juror and Juror 785, who was dismissed on the last day of trial, and possibly testimony from court staff. He must also present evidence impeaching Ms. Hill.

Evidence impeaching Ms. Hill includes her emails, text messages, and telephone records, testimony from court staff, testimony and documentary evidence from persons involved in the production of her book, complaints against Ms. Hill and the results of investigations into Ms. Hill's wrongdoing. It includes evidence related to her involvement in the removal of Juror 785—not because the removal itself is grounds for a new trial, but because Juror 785 has averred Ms. Hill was involved with her removal in an improper and dishonest way that, if true, would serve to impeach Ms. Hill's credibility. Both witnesses and documentary evidence regarding the allegedly fabricated Facebook post, which ultimately did not cause Juror 785 to be removed, and witnesses and documentary evidence regarding Juror 785's alleged statements to her tenants during trial, which ultimately did cause Juror 785 to be removed, are relevant to Ms. Hill's credibility. Evidence impeaching Ms. Hill includes evidence demonstrating her personal interest in the outcome of the trial and willingness to engage in obviously inappropriate conduct to further that personal interest. For example, emails released to journalists in response to FOIA requests show that Ms. Hill was sending emails directly to prosecutors and law enforcement witnesses for the State during trial about the merits of testimony from defense witnesses under examination at that moment. Emails from B. Hill to C. Waters, C. Jewell, & C. Ghent (Feb. 21, 2023) (FITSNEWS_FOIA_000624 & _000861) (attached as **Exhibit A**). Evidence impeaching Ms. Hill likely also includes testimony from Judge Newman.

It is possible that Ms. Hill will respond to one or more questions at the evidentiary hearing by asserting rights under the Fifth Amendment. She should not be permitted to do so. She waived the right to assert the Fifth Amendment in this proceeding when she submitted an affidavit specifically denying each allegation against her. *See Brown v. United States*, 356 U.S. 148, 154–55 (1958) (holding that if a witness offers testimony voluntarily “his credibility may be impeached

and his testimony assailed like that of any other witness, and the breadth of his waiver is determined by the scope of relevant cross-examination”). If she asserts the Fifth Amendment in response to any question, she should be instructed to answer the question, and if she refuses, her testimony should be struck in its entirety.

There will be much evidence to present that impeaches Ms. Hill. The State may argue presenting it all would be cumulative or repetitive or otherwise unnecessary. But evidence is cumulative only when it “supports a fact established by the existing evidence.” Evidence, Black’s Law Dictionary (11th ed. 2019). So long as the Court is prepared to give Ms. Hill’s testimony any weight, her lack of credibility is not “established” and evidence impeaching her cannot be considered cumulative or repetitive.¹ Courts have underscored the noncumulative nature of additional evidence when a trial features a “swearing match” between witnesses on both sides. *See, e.g., English v. Romanowski*, 602 F.3d 714 (6th Cir. 2010) (rejecting state court’s conclusion that witness’s testimony was cumulative; the state court “failed to recognize that the trial was essentially a swearing match” between witnesses on both sides); *Montgomery v. Petersen*, 846 F.2d 407, 413, 415 (7th Cir. 1988) (holding that, given the “swearing match” between the witnesses, the uncalled witnesses were not cumulative because they would have “directly contradicted the state’s chief witness,” while providing the defense with a disinterested alibi witness who could have caused the jury to “view[] the otherwise impeachable testimony of the twelve [defense] witnesses in a different light”); *Nealy v. Cabana*, 764 F.2d 1173, 1174 (5th Cir. 1985) (holding that counsel’s failure to investigate and call alibi witnesses was prejudicial “[b]ecause the trial boiled

¹ If the Court were to decide pre-hearing that it cannot credit Ms. Hill over the sworn testimony of any juror, it is likely that the hearing would consist only of Court-conducted *in camera* examination of jurors. This would also avoid potential Fifth Amendment issues regarding Ms. Hill. It is unlikely the State would agree to that since it is likely the State can prevail **only** if the Court finds Ms. Hill to be credible.

down to a swearing match . . . and because the missing testimony might have affected the jury's appraisal of the truthfulness of the state's witness and its evaluation of the relative credibility of the conflicting witnesses").

Currently, defense counsel anticipates identifying the trial transcript and exhibits from trial for use at the evidentiary hearing. However, until such time as the State provides Mr. Murdaugh with its discovery in this matter, his counsel is unable to provide the Court with a complete list of exhibits and witnesses, or a list of subpoenas he needs. Once the State produces its discovery, defense counsel will supplement this response immediately to provide a complete list, including a list of subpoenas he needs, if any are needed. It is likely much of the information he would otherwise seek by subpoena has already been compiled by the State. To the extent more subpoenas are needed, it would expedite the process if the Court were to authorize Mr. Murdaugh's counsel to issue subpoenas duces tecum returnable before the evidentiary hearing or, depending on the recipient, to issue the requested subpoenas itself. Mr. Murdaugh at present does not anticipate requesting a subpoena for documentary discovery regarding any deliberating juror but cannot be certain before receiving discovery from the State.

The State has had months in which to use the tools available to law enforcement to conduct discovery regarding this motion as well as to investigate the numerous independent complaints of wrongdoing against Ms. Hill. It will be well prepared to bolster its witnesses and to impeach witnesses favorable to the defense. Mr. Murdaugh has been unable to conduct any discovery whatsoever. All he has are voluntary statements made by jurors and other witnesses willing to talk to his lawyers and information published by journalists. To be prepared to go forward on the January 29 date set for the evidentiary hearing, he urgently needs the State to produce its discovery and to receive authorization to issue his own subpoenas as soon as possible.

G. Jurors (and Judge Newman, if necessary) should be examined *in camera* by the Court, but other witnesses should be examined by counsel in open court.

The default method of examining witnesses at an adversarial proceeding is through questioning by counsel for the parties. See Rule 614(b), SCRE (“***When required by the interests of justice only***, the court may interrogate witnesses.” (emphasis added)). All witnesses should be so examined unless there is good cause to reserve examination to the Court. *Id.* Mr. Murdaugh believes good cause exists for the Court to conduct the examination of jurors, including the dismissed juror and alternate juror, itself, *in camera*, with a redacted transcript provided to the public. In addition to asking its own questions, the Court could accept suggested questions from the parties, in advance of the examination and during the examination, which the Court in its discretion may or may not ask. In addition to shielding jurors from appearing on television involuntarily, *in camera* examination is necessary because it will be difficult for a juror to testify without revealing personally identifying information like his or her name or the names of other jurors. By testifying *in camera*, jurors may speak freely with any personal information in their testimony redacted from the publicly available transcript. Further, jurors may be unsettled by being interrogated by the same lawyers they watched interrogate witnesses for six weeks. Examination by the Court avoids that issue.

The State agrees jurors should be examined by the Court, and has argued the Court should question them “with a mind to at least (1) whether the communication actually occurred and, if so, its context and substance; (2) the number of jurors exposed to the improper communication; (3) the weight of the evidence properly before the jury; and (4) the likelihood that curative measures were effective in reducing the prejudice.” Resp. Opp’n Mot. New Trial 6. Only the first topic is appropriate. The only relevant subject for juror examinations is whether Ms. Hill made improper communications on the merits of the case, including anything serving to corroborate or refute

testimony on that subject. The number of jurors exposed to the communications is irrelevant so long as it is at least one deliberating juror. *See Parker*, 385 U.S. at 366. The “weight of the evidence properly before the jury” and “the likelihood that curative measures were effective in reducing the prejudice” are entirely irrelevant under the controlling legal standard, *see Cameron*, 311 S.C. at 207–08, 428 S.E.2d at 12, and appear to solicit testimony inadmissible under Rule 606(b) of the South Carolina Rules of Evidence.

If testimony is needed from Judge Newman, Mr. Murdaugh believes it should also be conducted by the Court *in camera*, to preserve the dignity of his judicial office.

Mr. Murdaugh does not believe good cause exists to examine any other witness, including Ms. Hill, in any fashion other than the traditional means of attorney questioning in open court. Ms. Hill especially is an elected public official accused of malfeasance in office, whom Mr. Murdaugh has accused of violating his constitutional rights in a criminal proceeding, and who has voluntarily provided an affidavit directly contradicting Mr. Murdaugh’s claims. She does not need to be shielded from scrutiny in the same manner as anonymous jurors involuntarily summoned to serve. She is a witness against Mr. Murdaugh in a criminal case whom Mr. Murdaugh has a right to challenge in open court. *See* Rules 611(b) & 614(b), SCRE.²

² Additionally, although the Sixth Amendment Confrontation Clause does not apply to a motion for a new trial, *see, e.g., United States v. Boyd*, 131 F.3d 951, 954 (11th Cir. 1997), Article I, § 14 of the South Carolina Constitution provides that “any person charged with an offense shall enjoy the right . . . to be fully heard in his defense by himself or by his counsel.” This right would be violated if the Court were to credit Ms. Hill’s testimony against Mr. Murdaugh without allowing his counsel the opportunity to challenge her testimony through cross-examination. *Cf. State v. Hester*, 137 S.C. 145, 134 S.E. 885, 899 (1926) (observing the “right to cross-examine is one which must remain inviolate,” “[t]he power of cross-examination . . . certainly is one of the most efficacious, tests which the law has devised for the discovery of truth,” and it is “[o]ne of the most inestimable rights by which a man may maintain his defense” (internal quotation marks omitted)). However, if the Court were to decide Ms. Hill’s testimony cannot be credited, her testimony would not be relevant to any issue and Mr. Murdaugh would have no right to examine her.

H. Counsel for non-parties should not be permitted to participate in these proceedings.

Attorney Eric Bland has requested to participate in these proceedings as counsel for certain jurors who may be called to testify as witnesses. Mr. Murdaugh objects to Mr. Bland's request. This is a criminal proceeding brought by the State against the Defendant. Mr. Bland seeks a level of non-party participation (e.g., participating in status conferences) beyond even the rights afforded victims under Article I, § 24 of the South Carolina Constitution, and the jurors he represents are not crime victims. In discussing his request in the media, Mr. Bland stated on his podcast Cup of Justice, episode 61 (Dec. 26, 2023), that Justice Toal, the newly assigned presiding judge in this matter, "has friends sometimes to reward and enemies to punish" and "I worry about what procedures are going to be put in place, the fact that there was a status conference and you know I represent four jurors and I wasn't even told of that status conference, and I believe that my jurors have the right to legal representation in any type of proceeding dealing with Alex Murdaugh's verdicts where they're going to have their verdicts questioned." His stated intent is not to protect the personal interests of his clients as witnesses, but to advocate to sustain "their" verdict. To allow a publicity-seeking lawyer for non-victim private parties to intervene in this criminal case and advocate against Mr. Murdaugh as an additional opposing party would violate Mr. Murdaugh's procedural due process rights under Article I, § 3 of the South Carolina Constitution and the Fourteenth Amendment to the United States Constitution.

The jurors are simply witnesses with no more right to participate in this criminal proceeding than witnesses in any other criminal case. Unlike typical witnesses, they do have a right to a degree of anonymity so it could be appropriate to allow them to be heard through counsel if the Court were inclined to strip them of that anonymity. But neither party is asking the Court to do that, and the Court has made clear it is not inclined to do that. Mr. Murdaugh does not seek to subpoena telephone records or other personal records regarding them, and if he decided to do so

in the future, their lawyers of course could move to quash the subpoena. Otherwise, they have no cognizable interest in these proceedings, and if there is such an interest the Attorney General would be adequate to assert it.

The reason to hold an evidentiary hearing on Defendant's motion for a new trial is to protect Mr. Murdaugh's constitutional right to a fair judicial proceeding. It would defeat that purpose if the proceedings were allowed to devolve into a speaker's corner for lawyers who want to appear on television even more than they already do. Mr. Murdaugh therefore asks the Court to limit the participation of any witness-retained lawyer to the extremely limited role traditionally allowed to a lawyer representing an innocent bystander witness in a criminal case. Further, he requests that the Court order the Clerk of Court not to accept any filings in this matter from any non-parties without leave of the Court obtained prior to filing.

III. Conclusion

For the foregoing reasons, Mr. Murdaugh respectfully submits that when Ms. Hill's jury tampering is proven at the evidentiary hearing, the Court must grant the motion for a new trial.

Respectfully submitted,

s/ Richard A. Harpootlian

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Attorneys for Richard Alexander Murdaugh

January 3, 2024
Columbia, South Carolina.

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Jan 03 2024

S.C. SUPREME COURT

EXHIBIT A

(Emails from B. Hill to C. Waters, C.
Jewell, & G. Ghent, February 21, 2023)

From: "Rebecca Hill" <rhill@colletoncounty.org>
Sent date: Tue, 21 Feb 2023 13:44:25 -0500 (EST)
Subject: Fwd: Website Inquiry -Murdaugh trial
To: "Creighton Waters" <CWaters@scag.gov>, "Carly Jewell" <CarlyJewell@scag.gov>, "Ghent, Charles" <cghent@sled.sc.gov>

Rebecca "Becky" H. Hill

Clerk of Court
Colleton County
P.O. Box 620
Walterboro, SC 29488
(843) 549-5791 Ext. 1101
Cell: (843) 908-1462

----- Forwarded message -----
From: **Do Not Reply** <noreply@jotform.com>
Date: Tue, Feb 21, 2023 at 1:00 PM
Subject: Website Inquiry -Murdaugh trial
To: <clerkofcourt@colletoncounty.org>

Murdaugh trial

Name	Andy Gibbs
Email Address	andy@andygibbs.com
Callback Number	(530) 200-5511
To	Courthouse
Recipient	clerkofcourt@colletoncounty.org
Subject	Murdaugh trial
Message	For: Creighton Waters - forensic research witness is ignoring the standard crouching / stalking posture of a 6'3" person would use to quietly approach the target. His assumption assumes someone simply walking up to a target to shoot. On cross - ask what height the 300 blackout would be if stalking a target.
Embedded	Yes

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From: "Rebecca Hill" <rhill@colletoncounty.org>
Sent date: Tue, 21 Feb 2023 15:44:10 -0500 (EST)
Subject: Fwd: Website Inquiry -Defense witness Mike Sutton
To: "Carly Jewell" <CarlyJewell@scag.gov>

here's another one.

Rebecca "Becky" H. Hill

Clerk of Court
Colleton County
P.O. Box 620
Walterboro, SC 29488
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Cell: (843) 908-1462

----- Forwarded message -----

From: **Do Not Reply** <noreply@jotform.com>
Date: Tue, Feb 21, 2023 at 3:25 PM
Subject: Website Inquiry -Defense witness Mike Sutton
To: <clerkofcourt@colletoncounty.org>

Defense witness Mike Sutton

Name	Mike Loughran
Email Address	loughranmike@yahoo.com
Callback Number	(206) 369-1818
To	Courthouse
Recipient	clerkofcourt@colletoncounty.org
Subject	Defense witness Mike Sutton
Message	I am a former paratrooper qualified US Army Veteran and left the service at a rank of Captain. I regularly shoot AR15 style rifles and have assembled them, built them, changed barrels & calibers, handguards and components. I am very familiar both with the weapon platform as well as ballistics as I reload my own ammunition for AR-15 calibers. This witness's testimony that the shooter had to be 5'2 - 5'4" is frankly pathetic. His projections rely solely on the assumption that the shooter was standing upright when shooting. He ignores the possibility(probability) that the shooter was either on one knee or standing but in a crouched position with his knees bent significantly. It is very likely an attacker would have been crouched low to conceal their presence at least at the start of the killings. He also ignores that the actual rifle could have anywhere from a 7" to 24" barrel and if it was outfitted with a collapsible stock all of his assumptions would have to change. I am hopeful you are ready to rebut these assertions as I find them laughable.
Embedded	Yes

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Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT E

(Respondent's Brief)

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)

State of South Carolina,

) Case Nos: 2022-GS-15-00592
) 2022-GS-15-00593
) 2022-GS-15-00594
) 2022-GS-15-00595

v.

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Jan 03 2024

S.C. SUPREME COURT

Richard Alexander Murdaugh,
Defendant.

) STATE'S PRE-HEARING BRIEF IN
) OPPOSITION TO DEFENSE MOTION FOR A
) NEW TRIAL
)
)

Many of the legal and factual issues in contention have been addressed at considerable length by the State in its Response to Defendant's Motion for a New Trial and Motions to Strike filed November 7, 2023 (hereafter "State's Response to Motion"). The following is a summary of the various issues the State contends need to be litigated for the motion for a new trial.

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. Case law and general respect for the burdens of public service on a jury – particularly in a case as lengthy and complicated as this one – preclude jurors from being subjected to an invasive and burdensome inquiry as if they were themselves charged and on trial.

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. Murdaugh must make a *prima facie* showing that he can meet that burden before an evidentiary hearing

may be granted, and as part of that showing must establish that he was not contemporaneously aware of the issue alleged and failed to raise it. **{See State's Response to Motion at 2-4}**. See also Rule 29, SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence").

Murdaugh argues that because he alleges improper contacts by a court official, prejudice must be presumed under *Remmer v. United States*, 347 U.S. 227 (1954), and that the burden of proof thus shifts to the State to prove lack of any prejudice. However, *Remmer's* "presumption of prejudice" standard was abrogated by the standard set in *Smith v. Phillips*, 455 U.S. 209, 215-16 (1982) (the remedy is the opportunity to prove actual bias); and in any event has been also recently rejected by the Supreme Court of South Carolina in *State v. Green*, 432 S.C. 97, 100, 851 S.E.2d 440, 441 (2020). Accordingly, Murdaugh bears the burden to show prejudice. **{See State's Response to Motion at 2-4}**.

II. EVIDENTIARY HEARING IS UNNECESSARY: Because Murdaugh Has Failed to Make a *Prima Facie* Showing of Prejudice, No Evidentiary Hearing is Necessary.

Indeed, the State's next argument is that 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: Juror 630. In the affidavit, Juror 630 attributes statements to Clerk Hill which resemble

arguments made by the State, but she does not claim she 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, Juror 630's affidavit is affirmatively inconsistent with a *prima facie* showing necessary for an evidentiary hearing. **{See State's Response to Motion at 19-20}.**

Juror 785 – the so-called “egg juror” and landlord to Juror 630 – did not participate in deliberations and was removed for her 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, Juror 785 replied “**not that I'm aware of.**” **{See State's Response to Motion at 10-16; 20; 23} {Trial Tr. 5553, II. 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.

III. JUDICIALLY CONDUCTED, LIMITED QUESTIONING: Should the Court Deem an Evidentiary Hearing Necessary, the Procedure should be Judicially Guided, and the Scope of Relevant Evidence is Limited

In the event the Court deems an evidentiary hearing necessary to resolve the motion, 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.

Defendant wishes to make central his focus on the credibility of Clerk Hill as a potential witness, specifically in the context of a Facebook post supposedly involving Juror 785's ex-spouse. However, Juror 785's improper contact with third parties was the catalyst of the inquiry into the juror, and the trial judge specifically stated on the record that nothing to do with the Facebook post had anything to do with excluding the juror. **{Trial Tr. 5740-43}**. Every portion of Murdaugh's motion relating to Facebook posts is a red herring, and the State has moved to strike every part of the motion related thereto. **{See State's Response to Motion at 18-19}**.

Murdaugh attempt to challenge his own valid conviction cannot be a vehicle to issue witness subpoenas to those with no testimony relevant to the underlying question of whether improper contacts occurred and whether prejudice flowed therefrom. The relevant questions are for the jurors, and their questioning must be judicially directed if it must occur at all.

IV. POTENTIAL EXHIBITS SHOULD BE LIMITED

The State proposes few exhibits are relevant in any potential evidentiary hearing. The State asks the Court consider as exhibits or otherwise part of the record the transcript of the trial, which in particular includes Judge Newman's repeated instructions

to the jury to base their decision solely on the evidence, the *in camera* hearings regarding the removal of Juror 785, and the jury's verdict and affirmation upon polling.

Depending on the Court's ruling as to the nature of the inquiry to be conducted and only if the results of any limited questioning of the jurors requires it, additional examination may be necessary from jurors and other witnesses. Exhibits could also include recorded interviews, written statements, and memoranda of interview with the jurors, as well as interviews and testimony from clerk staff, and others conducted by SLED following Murdaugh's motion for a new trial.

Finally, as the State noted during the conference call, it is prepared to share the post-trial interviews with Murdaugh's attorneys, but must request a protective order as discussed during the conference call and provided concurrently with this filing. The State also concurrently files a Motion for Reciprocal Discovery to be provided similar information gathered by the defense during the preparation of and subsequent to the filing of their motion for a new trial.

CONCLUSION

WHEREFORE, the State respectfully requests that this Court summarily 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 the jurors and witnesses presented, find Murdaugh's allegations to be not credible and deny his motion for a new trial.

Should the Court desire more thorough briefing on any of the issues raised herein, or in the State's Response to Motion, the State will of course oblige.

Respectfully submitted,

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Attorney General

DONALD J. ZELENKA
Deputy Attorney General

S. CREIGHTON WATERS
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:

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

1/3/2023

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT F

(Appellant's Second Brief)

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

State of South Carolina,

v.

Richard Alexander Murdaugh,

Defendant.

**COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

Indictment Nos. 2022-GS-15-00592, -593,
-594, and -595

**DEFENDANT’S PRE-HEARING BRIEF
RE: MOTION FOR A NEW TRIAL**

Defendant Richard Alexander Murdaugh, through undersigned counsel, pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure, hereby re-submits this pre-hearing brief as the Court directed on January 4, 2024.

I. Introduction

Mr. Murdaugh was indicted for the murder of his wife Maggie and son Paul on July 14, 2022. His murder trial began January 23, 2023. The presiding judge was the Honorable Clifton Newman. The trial ran for six weeks, ending with convictions on the evening of March 2, 2023, and sentencing on March 3, 2023.

On October 27, 2023, Mr. Murdaugh filed a motion for a new trial based on after-discovered evidence, having obtained leave from the Court of Appeals to suspend his appeal of his convictions to file the motion. His motion alleges that Rebecca Hill, the elected Clerk of Court for Colleton County, had extensive private communications with members of the jury during trial. This allegation was supported by sworn affidavits of jurors and a witness to juror interviews, testimony at *in camera* proceedings, and other evidence including Ms. Hill’s own book. The subject matter of Ms. Hill’s alleged communications was the evidence being presented at trial. Mr. Murdaugh alleges that an elected state official deliberately violated his constitutional right to a fair trial before an impartial jury. If that allegation is proven, the law requires a new trial.

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Jan 10 2024

S.C. SUPREME COURT

On December 21, 2023, the Court instructed the parties to submit pre-hearing briefs by January 3, 2024. On January 4, 2024, the Court instructed the parties to resubmit their briefs answering the following questions directly:

1. List all potential witnesses you plan to call during the evidentiary hearing.
 - a. List any objections or challenges you plan to make to opposing party's witnesses. I understand you may not have an exact list but you can predict the opposing side's intentions as far as witnesses.
2. List all exhibits you plan to introduce during the evidentiary hearing.
 - a. Again, list any objection or challenges to opposing party's exhibits.
3. Clarify your argument as to whether the Defendant is entitled to new trial or not.
 - a. Specifically, clarify the argument you will make during the evidentiary hearing. I've already decided an evidentiary hearing will occur. The mere fact that I have set the matter to include an evidentiary hearing does not mean I have decided any issue in the case at the present.
4. Any procedural issues which you feel may affect the evidentiary hearing:
 - a. Issues regarding the subpoena of specific witnesses.
 - b. Your position regarding how the court should receive testimony. Whether any witness testimony should be conducted in camera rather than in open court.
5. Any other issues regarding the conduct for the hearing of the merits of the motion.

Mr. Murdaugh submits this revised brief organized under the issues the Court identified. After his response to point number five, Mr. Murdaugh provides, for issue preservation purposes, responses to arguments the State asserted in its filed memoranda which the Court appears to have rejected or deemed moot.

II. List all potential witnesses you plan to call during the evidentiary hearing.

In a criminal proceeding, the State must produce evidence proving guilt beyond a reasonable doubt. The State has powerful investigative tools to marshal evidence against the accused. At trial, it is decided whether its evidence meets that demanding standard. Thus, the defendant typically does not need discovery beyond production by the State of the evidence against him. Similarly, in a civil proceeding, a party asserting a claim has the burden of production to produce evidence supporting its claim and the burden of persuasion to show it has met the legal standard for the relief it seeks. Thus, in civil litigation the adjudicative proceeding is preceded by a period of discovery, in which compulsory process is available to the parties to marshal the evidence they will present to the factfinder.

This is a criminal case, but the instant motion places Mr. Murdaugh in the position of a plaintiff in a civil proceeding. Mr. Murdaugh needs discovery because he has an affirmative case to prove. As the movant, Mr. Murdaugh has the burden of proving his claim for relief. Although no South Carolina case states the standard of proof applicable in this situation, the general rule for new trial motions based on unauthorized communications with jurors is that the standard of proof is a preponderance of the evidence. Mr. Murdaugh must make “two showings, by a preponderance of the evidence: [1] [extrajudicial] contact or communications between jurors and unauthorized persons occurred, and [2] the contact or communications pertained to the matter before the jury.” *E.g., State v. Berrios*, 129 A.3d 696, 713 (Conn. 2016) (quoting *Ramirez v. State*, 7 N.E.3d 933, 939 (Ind. 2014)).

Yet it is the State, and not Mr. Murdaugh, which has had the opportunity to conduct discovery for the past several months regarding Mr. Murdaugh’s claim using the tools available to law enforcement. It is well prepared to bolster its witnesses and to impeach witnesses favorable to the defense. Mr. Murdaugh has been unable to conduct any discovery whatsoever. All he has

had are voluntary statements made by jurors and other witnesses willing to talk to his lawyers and information published by journalists. He received discovery from the State less than a week ago. At present it is impossible for him to state with certainty which witnesses he will call and which documents he will introduce as exhibits during the testimony of those witnesses.

With that important caveat, at present, Mr. Murdaugh plans to call the following witnesses in his case-in-chief during the evidentiary hearing:

- Juror 254
- Juror 630
- Juror 741
- Juror 785
- Rhonda McElveen, Barnwell County Clerk of Court

The State must call Ms. Hill to deny the allegations that she tampered with the jury. Depending on Ms. Hill's testimony, Mr. Murdaugh might call some of the following witnesses as rebuttal witnesses:

- Laura Hayes, former deputy Clerk of Court in Colleton County
- Jeffrey Hill, former IT Director for the Colleton County Courthouse
- The Honorable Clifton Newman, retired Circuit Court Judge
- Tim Stone, ex-husband of Juror 785
- Timothy Stone, original poster of the FB message presented to Judge Newman during trial and included in the Court's Exhibit 4
- Lori Weiss, employee of the Clerk of Court in Colleton County

A. List any objections or challenges you plan to make to opposing party's witnesses. I understand you may not have an exact list but you can predict the opposing side's intentions as far as witnesses.

Mr. Murdaugh believes the State will call jurors, bailiffs, and court staff who were never or almost never in the jury room in which Ms. Hill made her jury-tampering statements, to present a cascade of witnesses saying they never heard Ms. Hill make inappropriate statements in the jury room, to imply by false logic that she therefore did not make such statements.

When the jurors retired from the courtroom during trial, they spread across two different rooms. Jurors 254, 572, 578, 589, 630, 741, and 785 were in the actual courthouse jury room. Jurors 193, 326, 530, 544, 729, 826, and 864 were in Judge Perry Buckner's office. Ms. Hill made her jury-tampering statements to jurors in the jury room. Mr. Murdaugh has no objection to the State calling other jurors who were in that room to testify that they never heard Ms. Hill make inappropriate statements. But Mr. Murdaugh objects to calling jurors who were in a different room to testify that they never heard Ms. Hill make inappropriate statements. There are millions of people in South Carolina who did not hear Ms. Hill say what certain jurors heard her say, because they were not in the room with them. Their testimony is not probative of whether Ms. Hill in fact said what several jurors have said she said when they were together in the same room at the same time and is therefore inadmissible. *See* Rule 401, SCRE (providing that evidence is relevant if it is probative of a material fact) & Rule 402, SCRE ("Evidence which is not relevant is not admissible."). Calling jurors who were in a separate office, or bailiffs or court staff who were stationed in different parts of the courthouse, is hardly more probative than calling jurors or court staff from other courthouses in South Carolina. Therefore, if the Court is inclined to allow the State to call jurors 193, 326, 530, 544, 729, 826, or 864, before allowing the State to ask any questions about what Ms. Hill may have said in the jury room it should require the State to lay a foundation that the juror was actually or at least usually in the jury room. *See* Rule 602, SCRE

(“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”).

Further, Mr. Murdaugh will object to any questions posed to jurors that seek to invade the province of their deliberations in violation of Rule 606(b) of the South Carolina Rules of Evidence. Specifically, he would object to questions such as, “Would your decision have been the same if you had not been exposed to improper communications from the Clerk of Court, or any third party?”

Mr. Murdaugh also plans to call Rhonda McElveen, the Barnwell County Clerk of Court who assisted at the trial. The State presumably would object to her for the same reason Mr. Murdaugh objects to calling persons who were not in the jury room to say they never heard something allegedly said in the jury room—she was not in the jury room. Mr. Murdaugh however believes, based on her SLED interview, that she will corroborate expected juror testimony about Ms. Hill’s statements because she will testify that Ms. Hill made substantively identical statements to her during trial, and because she received several complaints from court staff about Ms. Hill having inappropriate and excessive contacts with jurors. She therefore may have personal knowledge of facts probative of whether Ms. Hill made the statements jurors say she made. If the State objects to her testimony, Mr. Murdaugh would ask the Court to review her videorecorded interview with SLED and decide for itself whether her testimony would assist the Court as factfinder. If the Court does so, however, it is important to review the video recording of her entire interview and not the SLED memorandum summarizing it. As explained in the discussion of the mode of witness examination, *infra*, the State’s memoranda summarizing witness interviews are sometimes grossly inaccurate, and when they are it is always in a manner that favors the State.

III. List all exhibits you plan to introduce during the evidentiary hearing.

The caveat about not having discovery applies even more forcefully regarding exhibits since exhibits are, typically, obtained through discovery. With that important caveat, at present, Mr. Murdaugh plans to introduce the following exhibits in his case-in-chief during the evidentiary hearing:

- Affidavits of jurors 630 and 785.
- Recorded interviews with SLED of jurors 254 and 741, and Rhonda McElveen

It is impossible to specifically list all exhibits to be used in the cross-examination of Ms. Hill without knowing her testimony, but the categories of exhibits will be her emails, text messages, telephone records, her book, recordings of her public statements and media interviews, her affidavit in this matter, SLED's memorandum for her interview (her counsel would not permit SLED to record the interview), and Court's exhibit number 4 from trial regarding the Facebook post issue.

A. Again, list any objection or challenges to opposing party's exhibits.

Reserving all objections to calling particular witnesses or asking particular questions, Mr. Murdaugh does not object to the use of witnesses' affidavits, written statements, or interview recordings as exhibits when examining the witness who gave the affidavit, statement, or interview. Mr. Murdaugh does not know what other documents the State may seek to introduce as exhibits.

The State may object that exhibits used to impeach Ms. Hill are inadmissible under Rule 608(b) of the South Carolina Rules of Evidence, which allows inquiry on cross-examination into specific instances of conduct probative of truthfulness or untruthfulness but prohibits proof of such instances by extrinsic evidence. But that rule does not apply to the witness's prior statements, which if denied may be proven by extrinsic evidence. Rule 613(b), SCRE; *see State v. Fossick*, 333 S.C. 66, 69–70, 508 S.E.2d 32, 33 (1998) (“The trial judge ruled the evidence inadmissible

for impeachment under Rule 608(b). . . . Since [the witness] denied the statement, the proffered extrinsic evidence was admissible under Rule 613(b). We conclude the trial judge erred . . .”). Ms. Hill’s emails, text messages, book, media interviews, etc., are her own statements and so if she denies them are provable by extrinsic evidence. SLED’s interview memorandum similarly is a record of her prior statement, evidence of which is not hearsay because the State is a party-opponent, Ms. Hill is an elected state official, and her statement to SLED concerns a matter within the scope of her employment as a state official and was made during the existence of that employment. *See* Rule 801(d)(2)(D), SCRE.

IV. Clarify your argument as to whether the Defendant is entitled to new trial or not.

A. Mr. Murdaugh does not need to show actual bias on the part of any juror to obtain a new trial.

If Mr. Murdaugh proves his allegation that Ms. Hill communicated with the jury about the evidence presented during his murder trial, the standard for deciding whether to grant a new trial is **not** whether the Court believes the outcome of the trial would have been the same had Ms. Hill’s jury tampering not occurred. “A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influence.” *State v. Johnson*, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990) (internal quotation marks omitted). Where “[t]here was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained . . . 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.” *State v. Cameron*, 311 S.C. 204, 207–08, 428 S.E.2d 10, 12 (Ct. App. 1993) (quoting *Holmes v. United States*, 284 F.2d 716, 718 (4th Cir. 1960)) (emphasis added). The law requires the “subject matter” of the communication to be harmless— “clearly” harmless. *Id.*

Otherwise, a new trial must be granted. Asking the jury what it wants for lunch is clearly harmless. Telling it not to believe the defendant when he testifies is not.

The issue before the Court is a structural issue in Mr. Murdaugh's trial, not a failure to impanel unbiased jurors. Where a new trial is sought based on biases or partiality jurors brought with them into the trial, required standard is to show actual bias, whether those biases were facts jurors concealed during voir dire (*e.g.*, *State v. Woods*, 345 S.C. 583, 550 S.E.2d 282 (2001)), were biases created by state action during voir dire (*e.g.*, *State v. Bryant*, 354 S.C. 390, 581 S.E.2d 157 (2003)), were biases resulting from jurors reading newspapers or other unauthorized materials during trial (*e.g.*, *State v. Stone*, 290 S.C. 380, 350 S.E.2d 517 (1986)) or initiating inappropriate communications during trial (*e.g.*, *Smith v. Phillips*, 45 U.S. 209 (1982)), or the like.

The present case is different because a state official instructed jurors how to view the defense case outside the presence of the court, the Defendant, and his counsel, and in other ways deliberately and surreptitiously used her official authority to direct the verdict to her preferred outcome. This is, fortunately, a vanishingly rare event, but it is one that requires a new trial.

The *Cameron* court's distinction between the communication being harmless and the subject matter of the communication being harmless and its requirement that a new trial be granted unless the latter is established recognizes that deliberate jury tampering by a court official cannot be cured or excused by the strength of the evidence presented at trial or jurors offering their own subjective opinions regarding their own biases. Even if every juror were to testify that he or she would have reached the same verdict regardless of Ms. Hill's tampering, a new trial is required if it is proven that Ms. Hill communicated with jurors about the merits of the evidence presented. Sustaining a conviction based on the Court's opinion the strength of the evidence against the accused regardless of improper external influences on the jury from court officials about the merits

of the case would effectively be a directed verdict for the prosecution—a statement that whatever happened at trial simply does not matter because the evidence can admit only one result regardless. That would constitute structural error. *Cf. Neder v. United States*, 527 U.S. 1, 34 (1999) (Scalia, J., concurring in part) (noting that even if “the judge certainly reached the ‘right’ result,” “a directed verdict against the defendant . . . would be *per se* reversible *no matter how overwhelming the unfavorable evidence*,” because “[t]he very premise of structural-error review is that even convictions reflecting the ‘right’ result are reversed for the sake of protecting a basic right” (emphasis in original)).

For example, in *Parker v. Gladden*, a bailiff told a juror in a murder trial “that wicked fellow, he is guilty.” 385 U.S. 363, 363 (1966) (per curiam). The Supreme Court of Oregon held the statement did not require a new trial because it was not shown the statement prejudiced the outcome of the trial. The U.S. Supreme Court reversed, holding “[t]he evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel,” and “[w]e have followed the undeviating rule, that the rights of confrontation and cross-examination are among the fundamental requirements of a constitutionally fair trial.” *Id.* at 364–65 (internal quotation marks and citations omitted).

In *Parker*, the state also argued that the bailiff’s statement was harmless because ten members of the jury never heard his statement and Oregon law at that time allowed a guilty verdict by ten affirmative votes of the twelve jurors. The Supreme Court rejected that reasoning, and, after questioning whether the factual record supported that argument, stated that in “any event, petitioner was entitled to be tried by 12, not 9 or even 10, impartial and unprejudiced jurors.” *Id.* at 366. That reasoning accords with the reasoning in *Cameron* 27 years later—the right being

protected is not the right to a “correct” verdict but the constitutional right to trial before a fair and impartial jury free from state officials’ improper influences. What matters is what was in fact said to the jurors by the state official, not a counterfactual analysis of what probably would have happened had that not in fact been said.

Our Supreme Court more recently touched on this point in *State v. Green*, 432 S.C. 97, 851 S.E.2d 440 (2020). In *Green*, during jury deliberations a juror asked a bailiff “what would happen in the event of a deadlock, and he responded the judge would likely give them an *Allen* charge and ask if they could stay later.” *State v. Green*, 427 S.C. 223, 229, 830 S.E.2d 711, 713 (Ct. App. 2019), *aff’d as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020) (citation omitted). The Court of Appeals held the bailiff’s comments were presumptively prejudicial because of his official position, but that the State rebutted that presumption by showing for various reasons that the remark did not in fact influence the outcome of the jury’s deliberations. *Id.* at 236, 830 S.E.2d at 717. The Supreme Court affirmed but modified the decision to correct the Court of Appeals’ reasoning. The communication was not prejudicial not because it did not in fact change the verdict, instead, it was not prejudicial because the subject matter of the communication was harmless: “The bailiff’s actions here—though improper—did not touch the merits, but dealt only with the procedural question of how the judge might handle a jury impasse that apparently never materialized.” *Green*, 432 S.C. at 100, 851 S.E.2d at 441. In other words, a bailiff presuming to tell the jury that if it is deadlocked, the judge will instruct them to keep deliberating is improper but likely harmless because the subject matter is procedural or logistical, rather than to the merits of the case.

Of course, the allegations in the instant motion—that a state official told the jury not to believe the defendant’s defense or his testimony when he testified in his own defense—

indisputably regard the merits of the case. The extensive, deliberate, and self-interested jury tampering in which Ms. Hill allegedly engaged far exceeds the simple bailiff mistakes that forced a retrial in *Cameron*, where “a bailiff’s misleading response to a juror’s question about sentencing options compromised the jury’s impartiality because it left the impression that their verdict could not affect the trial court’s sentencing discretion,” or in *Blake by Adams v. Spartanburg General Hospital*, where a bailiff told a juror “that the trial judge ‘did not like a hung jury, and that a hung jury places an extra burden on taxpayers.’” See *State v. Green*, 427 S.C. at 237, 830 S.E.2d at 717–18 (citing 311 S.C. at 208, 428 S.E.2d at 12 and quoting 307 S.C. 14, 16, 413 S.E.2d 816, 817 (1992)).

B. The State misstates the controlling legal standard and provides no authority supporting its mistaken position.

In response to Mr. Murdaugh’s motion for a new trial, the State incorrectly asserts that Murdaugh “must show both that the alleged improper communications occurred and that jurors were actually biased as a result.” Resp. Opp’n Mot. New Trial 3 n. 2. The State can cite no authority supporting that proposition. The State’s response includes citations to several cases purportedly supporting its position, but not one cited case actually supports it.

State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998): The State provides no parenthetical explanation of how *Kelly* supports its position because the case has nothing to do with the present motion. In *Kelly*, a juror was accused of misconduct, not a court official. During the guilt phase of a capital trial, a juror provided a pamphlet purportedly expressing God’s views on capital punishment to other jurors in the jury room. The trial judge dismissed the offending juror but determined that a mistrial was not warranted because it was not relevant to the issues in the guilt phase of the trial and because “no other juror had been exposed to the contents of this pamphlet.” *Id.* at 141, 502 S.E.2d at 104. The Supreme Court affirmed. Chief Justice Finney and Justice Toal

dissented, arguing “the inappropriate possession and use of the extraneous pamphlet by jury members so tainted the jury that its contents affected the ability of the jury to be fair and impartial at both the guilt and penalty phases of appellant’s bifurcated trial.” *Id.* at 150, 502 S.E.2d at 109. Regardless, as in the *Holmes* case that provides the controlling legal standard quoted in *Cameron*,

Here there is more than jury misconduct in reading forbidden matter. There was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained. When there has been such a communication, 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.

Holmes, 284 F.2d at 718 (emphasis added).

Smith v. Phillips, 45 U.S. 209 (1982): This case says nothing about the standard for granting a new trial when a state official tampers with the jury. In *Smith*, the prosecution failed to disclose that a juror had, during trial, applied for employment as an investigator in the prosecutor’s office. The U.S. Supreme Court held “[t]his 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,” and agreed with the state courts and federal district court that no actual bias was proven at the hearing. *Id.* 455 U.S. at 214–15. It reversed the U.S. Court of Appeals for the Second Circuit on the issue of whether the prosecution’s failure to disclose the letter was misconduct necessitating a new trial. But the issue in the instant motion is not whether a particular juror had an undisclosed bias or whether the prosecution concealed any pertinent information.

State v. Green, 432 S.C. 97, 851 S.E.2d 440 (2020): As explained above, in *Green* the Court held that an improper procedural comment by a bailiff to a jury was harmless because it did not bear on the merits. 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. Any such assertion would be precluded by the U.S. Supreme Court’s holding *Parker v. Gladden*, discussed above but notably not mentioned at

in the State's response despite also being discussed in Mr. Murdaugh's initial motion. The *Green* court did reasonably decline to extend the presumption in *Remmer v. United States* that “any private communication, contact, or tampering . . . with a juror during a trial about the matter pending before the jury is . . . deemed presumptively prejudicial” to situations where the communications at issue “did not touch the merits” of the case on trial. *Id.* at 99–100, 851 S.E.2d at 441 (quoting 347 U.S. 227 (1954)). Instead, it reversed the Court of Appeals application of *Remmer* prejudice and instead followed the reasoning of *Cameron*: the inquiry should focus on the subject matter of the improper communication rather than presuming all improper communications are prejudicial and then requiring the State to rebut the presumption even where the communications did not bear on the merits of the case. *Id.* at 99–101, 851 S.E.2d at 441. This has no relevance here because Ms. Hill's alleged statements to jurors indisputably bore on the merits.

State v. Cameron, 311 S.C. 204, 428 S.E.2d 10 (Ct. App. 1993): The State cites *Cameron* for the unremarkable proposition “[n]ot every inappropriate comment by a member of court staff to a juror rises to the level of constitutional error,” Resp. Opp'n Mot. New Trial 3, but in a footnote claims Mr. Murdaugh's citations to *Cameron* for the controlling legal standard cite to a “portion of the opinion which does not state the legal standard, but rather quotes a portion of a 4th Circuit Court of Appeals opinion inconsistent with the standard acknowledged by *Cameron* and more subsequently clarified in *Smith* and most recently in *Green*,” *id.* at 3 n.2. That assertion only makes sense if the State did not expect the Court to read the *Cameron* opinion. The entire portion of the *Cameron* opinion that follows its factual recitation is quoted below:

The trial judge ruled that the jury properly decided that the length of sentence he might impose was not their concern. He further ruled that the short colloquy between the bailiff and the forelady could not have in any way influenced the jury to refuse to recommend mercy.

A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature. *State v. Johnson*, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990); *State v. Wasson*, 299 S.C. 508, 511, 386 S.E.2d 255, 256 (1989); *State v. Salters*, 273 S.C. 501, 504, 257 S.E.2d 502, 504 (1979). The mere fact, however, that some conversation occurred between a juror and a court official would not necessarily prejudice a defendant. *State v. Goodwin*, 250 S.C. 403, 405, 158 S.E.2d 195, 197 (1967).

In this case, “[t]here was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained. When there has been such a communication, 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.” *Holmes v. United States*, 284 F.2d 716, 718 (4th Cir. 1960); see *Blake v. Spartanburg General Hospital*, 307 S.C. 14, 413 S.E.2d 816 (1992).

While the trial court adequately instructed the jury on the verdicts of guilty with and without mercy, the jury was obviously confused as to the length of the respective sentences. In this case, the right to fix punishment or make a recommendation that would place punishment in the discretion of the court rested exclusively with the jury. *State v. Brooks*, 271 S.C. 355, 359, 247 S.E.2d 436, 438 (1978); *State v. McGee*, 268 S.C. 618, 620, 235 S.E.2d 715, 716 (1977). The bailiff’s response to the forelady, that they should not worry if they were deadlocked because the judge was fair, was misleading. It tended to lessen the jury’s sense of responsibility by implying that if they rendered a verdict of guilty without mercy, the judge had some discretion in sentencing. “Jurors are simply not to consider the opinions of neighbors, officials or even other juries.” *State v. Thomas*, 287 S.C. 411, 413, 339 S.E.2d 129, 129 (1986) (quoting *State v. Smart*, 278 S.C. 515, 526, 299 S.E.2d 686, 693 (1982), cert. denied, 460 U.S. 1088, 103 S. Ct. 1784, 76 L. Ed.2d 353 (1983)).

The appellant’s conviction is reversed and the case is remanded for a new trial.

REVERSED AND REMANDED.

311 S.C. at 205–08, 428 S.E.2d at 11–12. There is no standard “acknowledged” or otherwise stated in the above opinion other than “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.” Mr. Murdaugh has no idea what “*Smith*” case the State believes “more subsequently clarified” the legal standard. The only “*Smith*” case cited in the State’s response is *Smith v. Phillips*, the irrelevant 1982 U.S. Supreme Court case discussed above that predated *Cameron* by eleven years. And as

discussed above, *Green* reversed a Court of Appeals decision to correct its reasoning to bring it in line with *Cameron*.

C. South Carolina case law provides the controlling legal standard.

As discussed above, the burden-shifting described in *Remmer* is not relevant to this case because the alleged communications were by a court official, to at least one deliberating juror, and inarguably pertained to the merits of the case being tried. This is because South Carolina case law—*Cameron*—provides the legal standard, not *Remmer*. If Mr. Murdaugh proves that the Clerk of Court engaged in surreptitious advocacy on the merits during trial, there is nothing for the State to rebut. A new trial is required. *See Cameron*, 311 S.C. at 207–08, 428 S.E.2d at 12.

U.S. Supreme Court decisions—in particular, *Parker v. Gladden*—control the decision here only insofar as they establish a “floor” below which the protections of South Carolina constitutional and decisional law cannot fall. As the Supreme Court of Utah recently stated in a case alleging improper jury contact by a bailiff: “Still, the Sixth Amendment right to an impartial jury was incorporated against the states through the Fourteenth Amendment in *Parker v. Gladden*, 385 U.S. 363, 364, (1966) (per curiam). As such, the Sixth Amendment forms the ‘floor’ below which the Utah Constitution’s protections cannot fall.” *Utah v. Soto*, 2022 UT 26, ¶ 21, 513 P.3d 684, 690 (parallel citations omitted).

Moreover, were *Remmer* controlling in this case, it would create a strong presumption of prejudice that the State must rebut. “In a criminal case, any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial, if not made in pursuance of known rules of the court and the instructions and directions of the court made during the trial, with full knowledge of the parties.” *Remmer*, 347 U.S. at 229. This rule has not been abrogated by *Smith v. Phillips* or rejected by our Supreme Court in *Green*, as the State claims in its original prehearing

brief. “The scope and currency of the *Remmer* presumption has split the federal circuits, but it ‘remains [a]live and well in the Fourth Circuit,’ *United States v. Lawson*, 677 F.3d 629, 642 (4th Cir. 2012), and therefore controls our approach to the Sixth Amendment issue Green raises.” *Green*, 427 S.C. at 235, 830 S.E.2d at 711 (Court of Appeals decision affirmed as modified in 432 S.C. 97, 851 S.E.2d 440). The Fourth Circuit explains that “[w]ith respect to the presumption of prejudice, we have recently observed, there is a split among the circuits regarding whether the *Remmer* presumption has survived intact following the Supreme Court’s decisions in *Smith v. Phillips*, 455 U.S. 209 (1982), and *United States v. Olano*, 507 U.S. 725 (1993).” *Barnes v. Joyner*, 751 F.3d 229, 242 (4th Cir. 2014) (internal quotation marks and parallel citations omitted). “[W]e have held that the *Remmer* presumption is clearly established federal law . . . even after the Supreme Court’s decisions in *Phillips* and *Olano*. *Id.* at 243.

In the referenced circuit split, the Second, Fourth, Seventh, Ninth, Tenth, and Eleventh Circuits continue to apply the *Remmer* presumption in cases involving external influences on jurors, while the Fifth, Sixth, Eighth, and District of Columbia Circuits have departed from the presumption. *United States v. Lawson*, 677 F.3d 629, 643 (4th Cir. 2012). However, a majority of circuits “hold that the *Remmer* presumption is still good law **with respect to egregious external interference** with the jury’s deliberative process via private communication, contact, or tampering with jurors about the matter.” *Connecticut v. Berrios*, 129 A.3d 696, 709 (Conn. 2016). In such cases, the First and Eighth Circuits join the majority position in applying the *Remmer* presumption. *Id.* at 710 (collecting cases). State courts generally do the same. *Id.* at 710–11 (collecting cases from Arizona, Illinois, Indiana, Maryland, Nevada, Oregon, and the District of Columbia).

South Carolina likewise “accord[s] with the approaches of the Second and Fourth Circuits with respect to serious, or not ‘innocuous’ claims of external influence, such as jury tampering.”

Id. at 710. As explained above, that is exactly what our Supreme Court held in *Green*. “Our unwillingness to categorically apply the *Remmer* presumption of prejudice stems from our view that not every inappropriate comment by a bailiff to a juror rises to the level of constitutional error.” *Green*, 432 S.C. at 100, 851 S.E.2d at 441. “The attempted bribery of a juror in *Remmer*—conduct which goes to the heart of the merits of the case on trial—is a far cry from the circumstances presented in this case,” in which a bailiff’s improper comment “dealt only with the procedural question of how the judge might handle a jury impasse that apparently never materialized.” *Id.* And, again, *Parker* provides a floor regarding what the State can rebut under *Remmer*—while the State could in other circumstances perhaps show, for example, that a communication was harmless because it was only heard by a non-deliberating juror, where a state official’s exhortations on the evidence presented at trial it was communicated to at least one deliberating juror the Court cannot overlook the offense by speculating that the outcome would have been the same regardless. See *Parker*, 385 U.S. at 363.

D. In addition to juror bias issues, a state official’s surreptitious advocacy to the jury outside the courtroom creates a structural error in the conduct of the trial.

It has long been held to be a structural error for a state actor to engage in *ex parte* advocacy to the jury during trial. “The requirement that a jury’s verdict must be based upon the evidence developed at the trial goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury.” *Turner v. Louisiana*, 379 U.S. 466, 472 (1965) (internal quotation marks omitted). “The evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel . . .” *Parker*, 385 U.S. at 364. In *Simmons v. South Carolina*, the U.S. Supreme Court similarly holds it is unconstitutional for the defendant to receive the death

penalty “on the basis of information which he had no opportunity to deny or explain.” 512 U.S. 154, 161 (1994) (internal quotation marks omitted).

The principle is ancient and foundational to our jury system:

In the ultimate analysis, only the jury can strip a man of his liberty or his life. In the language of Lord Coke, a juror must be as ‘indifferent as he stands unsworne.’ His verdict must be based upon the evidence developed at the trial. This is true, regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life which he occupies. It was so written into our law as early as 1807 by Chief Justice Marshall in *1 Burr’s Trial* 416(1807).

Irvin v. Dowd, 366 U.S. 717, 722 (1961) (citations omitted). Indeed, what is now called the “*Remmer*” presumption is far older than the 1954 *Remmer* decision. “Private communications, possibly prejudicial, between jurors and third persons, or witnesses, or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear.” *Mattox v. United States*, 146 U.S. 140, 150 (1892).¹ Likewise,

It is well settled, that it is not necessary to show that the minds of the jury, or of any member of it, were influenced. It is sufficient to show that intermeddling did take place, to set aside the verdict. Too much strictness cannot be exercised in guarding trials by jury from improper influence. It has been said that, “this strictness is necessary to give confidence to parties in the results of their causes; and every one ought to know that, for any, even the least, intermeddling with jurors, a verdict will always be set aside.”- *Knight v. Freeport*, 13 Mass. 220.

This is the language of the Supreme Court of Massachusetts in a civil cause. How much more important is it, to guard the purity of jury trials, against improper influence, when the matter at stake is the life or liberty of a prisoner.

The authorities upon this point all agree; and, as they are very numerous

¹ *Maddox* has a “red flag” in Westlaw because it was superseded in 1975 by Rule 606(b) of the Federal Rules of Evidence on a separate issue regarding the admissibility of juror testimony to impeach the verdict. But it is still currently cited by federal appellate courts for the principle that when state officials communicate *ex parte* with the jury about the merits of the case during trial, a new is required. *E.g.*, *Tarango v. McDaniel*, 837 F.3d 936, 947 (9th Cir. 2016) (“*Mattox* and its progeny further establish that undue contact with a juror by a government officer almost categorically risks influencing the verdict.”).

Pope v. Mississippi, 36 Miss. 121, 124 (Miss. Err. & App. 1858). For an even older example,

An officer is sworn to keep the jury, without permitting them to separate, or any one to converse with them; for no man knows what may happen; although the law requires that honest men should be returned upon juries, and, without a known objection, they are presumed to be *probi et legales homines*, yet they are weak men, and perhaps may be wrought upon by undue applications. The evil to be guarded against, is improper influence; and when an exposure to such an influence is shown, and it is not shown that it failed of effect, then the presumption is against the purity of the verdict.

Lord Delamere's Case, 4 Harg. St. T. 232 (Eng. 1685) (In *Lord Delamere's Case* Henry, Baron Delamere was tried for high treason before the Court of the Lord High Steward on January 14, 1685. A text of the decision is available at <https://quod.lib.umich.edu/e/eebo/A63176.0001.001/1:3?rgn=div1;view=fulltext>).

Contrary to the State's position, our State Supreme Court has not abrogated or abandoned this foundational principle that when the State's officials engage in *ex parte* communications with the jury during trial about the merits of the case, a new trial is required. Nor has the U.S. Supreme Court opened a door that could allow states to abandon that principle. All that has happened is a sensible restriction of the principle to exclude improper communications that do not bear on the merits of the issue before the jurors. See *Green*, 432 S.C. at 100, 851 S.E.2d at 441.

E. Mr. Murdaugh will argue that a preponderance of the evidence shows Ms. Hill made statements to at least one deliberating juror about the merits of the evidence presented at trial.

If they testify consistently with their affidavits and witness interviews, Juror 630 will testify Ms. Hill said they should not be fooled by the defense and that they should watch Mr. Murdaugh's body language with suspicion when he testified in his own defense, Juror 785 will testify that Ms. Hill told them not to be fooled by the defense, Juror 741 will testify that Ms. Hill told them not to let the defense confuse or convince them, and Juror 254 will testify that Ms. Hill told them to watch Mr. Murdaugh's body language when he testified in his own defense. Ms. McElveen will

testify that some of those statements are substantively identical to statements Ms. Hill made directly to her during trial, and that staff were complaining to her about Ms. Hill's excessive contact with the jury. Any other jurors called to testify will only be able to state that they never heard those comments by Ms. Hill. The only witness to directly contradict the testimony of these jurors will be Ms. Hill, but even she admits she met with the jury foreperson "a few times" to discuss "jurors who were having a hard time with anxiety during the trial" and the foreperson's "ability to keep the peace within the jury room due to many large personalities."

Ms. Hill's denials should not be credited because her many acts of fraud and dishonesty, which will be explored and detailed during cross-examination, demonstrate that she has a character for untruthfulness. *Cf.* Rule 606(b), SCRE. With Ms. Hill's denials uncredited, the juror testimony will be uncontroverted. Moreover, Jurors 254, 630, 741, and 785 have not appeared on television or otherwise given interviews or sought any publicity for themselves. They have not sought any payment for their story. They did not seek to be placed on this jury, they have maintained their anonymity ever since, and they have nothing to gain from false testimony. Their testimony therefore should be credited over the testimony of a Clerk of Court who has been repeatedly caught seeking wrongful money and publicity from this case, even going so far as to writing a book about the case that was removed from publication for her plagiarism.

V. Any procedural issues which you feel may affect the evidentiary hearing:

A. Issues regarding the subpoena of specific witnesses

Mr. Murdaugh requests that the Court issue a subpoena for each of the jurors and witnesses identified in response to question number 1. He also requests that the Court issue a forthwith order compelling the immediate production of documents subpoenaed by any party, so that the documents may be reviewed in advance of the hearing. Further, he requests that each party be

compelled to produce all documents received in response to a subpoena to the other party immediately upon receipt.

B. Your position regarding how the court should receive testimony. Whether any witness testimony should be conducted in camera rather than in open court.

Mr. Murdaugh believes good cause exists for the Court to conduct the examination of jurors *in camera*, with a redacted transcript provided to the public. In addition to shielding jurors from appearing on television involuntarily, *in camera* examination is necessary because it will be difficult for a juror to testify without revealing personally identifying information like his or her name or the names of other jurors. By testifying *in camera*, jurors may speak freely with any personal information in their testimony redacted from the publicly available transcript.

Mr. Murdaugh previously took the position that jurors should be examined by the Court rather than by counsel, with the Court accepting suggested questions from the parties, in advance of the examination and during the examination, which the Court in its discretion may or may not ask. Mr. Murdaugh's reasoning was that jurors may be unsettled by being interrogated by the same lawyers they watched interrogate witnesses for six weeks.

However, after receiving the SLED's video recordings and summary memoranda of juror interviews, Mr. Murdaugh's counsel are concerned that the Court may not have sufficient information to examine the jurors effectively. The interview memoranda are sometimes grossly inaccurate. For example, Ms. McElveen told investigators that court staff asked her to speak to Ms. Hill about her excessive contacts with jurors, including at Walmart, and that Ms. Hill was working on a book deal during trial and gave an author a seat with court staff in the well of the courtroom from where she could see sealed exhibits, overruling objections by stating "well they'll

just have to do what I want, today.”² For some reason, none of that made it into the interview memorandum. Thus, to examine jurors effectively, the Court would at least need to watch the entire SLED interview for each testifying juror, and to the extent the jurors speak about other jurors or staff, the interviews for those other jurors or staff as well. With only 19 days before the evidentiary hearing, counsel is best equipped to review this information in preparation for questioning, rather than the Court.

The State originally argued jurors should be examined by the Court, and has argued the Court should question them “with a mind to at least (1) whether the communication actually occurred and, if so, its context and substance; (2) the number of jurors exposed to the improper communication; (3) the weight of the evidence properly before the jury; and (4) the likelihood that curative measures were effective in reducing the prejudice.” Resp. Opp’n Mot. New Trial 6. Only the first topic is appropriate. The only relevant subject for juror examinations is whether Ms. Hill made improper communications on the merits of the case, including anything serving to corroborate or refute testimony on that subject. The number of jurors exposed to the communications is irrelevant so long as it is at least one deliberating juror. *See Parker*, 385 U.S. at 366. The “weight of the evidence properly before the jury” and “the likelihood that curative measures were effective in reducing the prejudice” are entirely irrelevant under the controlling legal standard, *see Cameron*, 311 S.C. at 207–08, 428 S.E.2d at 12, and appear to solicit testimony inadmissible under Rule 606(b) of the South Carolina Rules of Evidence.

In its original prehearing brief, the State moved away from its position in its response to the motion for a new trial, to argue that the Court should only ask jurors (1) if they voted guilty,

² Ms. McElveen was not a juror, of course, but is used as an example in this brief to preserve juror privacy. The point is the same for any SLED interview.

and (2) whether their verdict was “based solely on the testimony, evidence, law, and arguments of counsel presented at trial.” Prehearing Br. 4. The State’s position appears to be a repackaging of its argument that there should not be an evidentiary hearing at all, which the Court has rejected. Obviously, an evidentiary hearing has no point if no one is going to ask any juror whether Ms. Hill made the statements Mr. Murdaugh alleges she made. The State appears to agree that if jurors indeed will be asked substantive questions, it may be necessary for them to be examined by counsel. *Id.* at 5 (noting that “additional inquiry” would be “with questions from the Court, questions suggested to the Court by counsel, and questioning by counsel”).

If testimony is needed from Judge Newman, Mr. Murdaugh believes it should also be conducted by the Court *in camera*, to preserve the dignity of his judicial office.

The default method of examining witnesses at an adversarial proceeding is through questioning by counsel for the parties. See Rule 614(b), SCRE (“***When required by the interests of justice only***, the court may interrogate witnesses.” (emphasis added)). All witnesses should be so examined unless there is good cause to reserve examination to the Court. *Id.* Mr. Murdaugh does not believe good cause exists to reserve the examination of any witness to the Court, other than Judge Newman and possibly the jurors. Ms. Hill especially is an elected public official accused of malfeasance in office, whom Mr. Murdaugh has accused of violating his constitutional rights in a criminal proceeding, and who has voluntarily provided an affidavit directly contradicting Mr. Murdaugh’s claims. She does not need to be shielded from scrutiny in the same manner as anonymous jurors involuntarily summoned to serve. She is a witness against Mr.

Murdaugh in a criminal case whom Mr. Murdaugh has a right to challenge in open court. See Rules 611(b) & 614(b), SCRE.³

VI. Any other issues regarding the conduct for the hearing of the merits of the motion.

A. Mr. Murdaugh needs wide latitude in impeaching Ms. Hill.

Ms. Hill has provided an affidavit that contradicts the sworn and unsworn statements of many jurors. As a result, Ms. Hill's credibility will be a central issue in this evidentiary hearing. For this reason, counsel requests wide latitude in examining Ms. Hill, if she is called as a witness by the State.

Mr. Murdaugh anticipates the only person who can directly contradict jurors who witnessed Ms. Hill's jury tampering is Ms. Hill.

Mr. Murdaugh therefore must present evidence corroborating Juror 630's testimony, including testimony from the alternate juror and Juror 785, who was dismissed on the last day of trial, and possibly testimony from court staff. He must also present evidence impeaching Ms. Hill.

Evidence impeaching Ms. Hill includes her emails, text messages, and telephone records, testimony from court staff, testimony and documentary evidence from persons involved in the production of her book, complaints against Ms. Hill and the results of investigations into Ms. Hill's wrongdoing. It includes evidence related to her involvement in the removal of Juror 785—not

³ Additionally, although the Sixth Amendment Confrontation Clause does not apply to a motion for a new trial, see, e.g., *United States v. Boyd*, 131 F.3d 951, 954 (11th Cir. 1997), Article I, § 14 of the South Carolina Constitution provides that "any person charged with an offense shall enjoy the right . . . to be fully heard in his defense by himself or by his counsel." This right would be violated if the Court were to credit Ms. Hill's testimony against Mr. Murdaugh without allowing his counsel the opportunity to challenge her testimony through cross-examination. Cf. *State v. Hester*, 137 S.C. 145, 134 S.E. 885, 899 (1926) (observing the "right to cross-examine is one which must remain inviolate," "[t]he power of cross-examination . . . certainly is one of the most efficacious, tests which the law has devised for the discovery of truth," and it is "[o]ne of the most inestimable rights by which a man may maintain his defense" (internal quotation marks omitted)). However, if the Court were to decide Ms. Hill's testimony cannot be credited, her testimony would not be relevant to any issue and Mr. Murdaugh would have no right to examine her.

because the removal itself is grounds for a new trial, but because Juror 785 has averred Ms. Hill was involved with her removal in an improper and dishonest way that, if true, would serve to impeach Ms. Hill's credibility. Both witnesses and documentary evidence regarding the allegedly fabricated Facebook post, which ultimately did not cause Juror 785 to be removed, and witnesses and documentary evidence regarding Juror 785's alleged statements to her tenants during trial, which ultimately did cause Juror 785 to be removed, are relevant to Ms. Hill's credibility. Evidence impeaching Ms. Hill includes evidence demonstrating her personal interest in the outcome of the trial and willingness to engage in obviously inappropriate conduct to further that personal interest. *See* Rule 606(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.") For example, emails released to journalists in response to FOIA requests show that Ms. Hill was sending emails directly to prosecutors and law enforcement witnesses for the State during trial about the merits of testimony from defense witnesses under examination at that moment. Emails from B. Hill to C. Waters, C. Jewell, & C. Ghent (Feb. 21, 2023) (FITSNEWS_FOIA_000624 & _000861. Evidence impeaching Ms. Hill may also include testimony from Judge Newman.

There will be much evidence to present that impeaches Ms. Hill. The State may argue presenting it all would be cumulative or repetitive or otherwise unnecessary. But evidence is cumulative only when it "supports a fact established by the existing evidence." Evidence, Black's Law Dictionary (11th ed. 2019). So long as the Court is prepared to give Ms. Hill's testimony any weight, her lack of credibility is not "established" and evidence impeaching her cannot be

considered cumulative or repetitive.⁴ Courts have underscored the noncumulative nature of additional evidence when a trial features a “swearing match” between witnesses on both sides. *See, e.g., English v. Romanowski*, 602 F.3d 714 (6th Cir. 2010) (rejecting state court’s conclusion that witness’s testimony was cumulative; the state court “failed to recognize that the trial was essentially a swearing match” between witnesses on both sides); *Montgomery v. Petersen*, 846 F.2d 407, 413, 415 (7th Cir. 1988) (holding that, given the “swearing match” between the witnesses, the uncalled witnesses were not cumulative because they would have “directly contradicted the state’s chief witness,” while providing the defense with a disinterested alibi witness who could have caused the jury to “view[] the otherwise impeachable testimony of the twelve [defense] witnesses in a different light”); *Nealy v. Cabana*, 764 F.2d 1173, 1174 (5th Cir. 1985) (holding that counsel’s failure to investigate and call alibi witnesses was prejudicial “[b]ecause the trial boiled down to a swearing match . . . and because the missing testimony might have affected the jury’s appraisal of the truthfulness of the state’s witness and its evaluation of the relative credibility of the conflicting witnesses”).

B. Counsel for non-parties should not be permitted to participate in these proceedings.

Attorney Eric Bland has requested to participate in these proceedings as counsel for certain jurors who may be called to testify as witnesses. Mr. Murdaugh objects to Mr. Bland’s request. This is a criminal proceeding brought by the State against the Defendant. Mr. Bland seeks a level of non-party participation (e.g., participating in status conferences) beyond even the rights afforded victims under Article I, § 24 of the South Carolina Constitution, and the jurors he represents are

⁴ If the Court were to decide pre-hearing that it cannot credit Ms. Hill over the sworn testimony of any juror, it is likely that the hearing would consist only of *in camera* examination of jurors. This would also avoid potential Fifth Amendment issues regarding Ms. Hill. It is unlikely the State would agree to that since it is likely the State can prevail **only** if the Court finds Ms. Hill to be credible.

not crime victims. In discussing his request in the media, Mr. Bland stated on his podcast Cup of Justice, episode 61 (Dec. 26, 2023), that Justice Toal, the newly assigned presiding judge in this matter “has friends sometimes to reward and enemies to punish” and “I worry about what procedures are going to be put in place, the fact that there was a status conference and you know I represent four jurors and I wasn’t even told of that status conference, and I believe that my jurors have the right to legal representation in any type of proceeding dealing with Alex Murdaugh’s verdicts where they’re going to have their verdicts questioned.” His stated intent is not to protect the personal interests of his clients as witnesses, but to advocate to sustain “their” verdict. To allow a publicity-seeking lawyer for non-victim private parties to intervene in this criminal case and advocate against Mr. Murdaugh as an additional opposing party would violate Mr. Murdaugh’s procedural due process rights under Article I, § 3 of the South Carolina Constitution and the Fourteenth Amendment to the United States Constitution.

The jurors are simply witnesses with no more right to participate in this criminal proceeding than witnesses in any other criminal case. Unlike typical witnesses, they do have a right to a degree of anonymity so it could be appropriate to allow them to be heard through counsel if the Court were inclined to strip them of that anonymity. But neither party is asking the Court to do that, and the Court has made clear it is not inclined to do that. Mr. Murdaugh does not seek to subpoena telephone records or other personal records regarding them, and if he decided to do so in the future, their lawyers of course could move to quash the subpoena. Otherwise, they have no cognizable interest in these proceedings, and if there is such an interest the Attorney General would be adequate to assert it.

The reason to hold an evidentiary hearing on Defendant’s motion for a new trial is to protect Mr. Murdaugh’s constitutional right to a fair judicial proceeding. It would defeat that purpose if

the proceedings were allowed to devolve into a speaker's corner for lawyers who want to appear on television even more than they already do. Mr. Murdaugh therefore asks the Court to limit the participation of any witness-retained lawyer to the extremely limited role traditionally allowed to a lawyer representing an innocent bystander witness in a criminal case. Further, he requests that the Court order the Clerk of Court not to accept any filings in this matter from any non-parties without leave of the Court obtained prior to filing.

VII. Responsive arguments on decided or moot issues presented for issue preservation

A. The Court must hold an evidentiary hearing.

The State's response argues Mr. Murdaugh has failed to show that he is entitled to an evidentiary hearing. Resp. Opp'n Mot. New Trial 19–21. The Court has instructed counsel that it has “already decided an evidentiary hearing will occur.” Nevertheless, because the State has made the argument in a filed memorandum and no filed order has addressed it directly, Mr. Murdaugh provides the following rebuttal for preservation purposes. As the State correctly argued before the Court of Appeals, the standard to suspend the direct appeal and for leave to file a motion for a new trial is a *prima facie* showing of an entitlement for relief. Return to Motion to Suspend Appeal and for Leave to File Motion for New Trial, *State v. Murdaugh*, Appellate Case No. 2023-000392 (Sept. 15, 2023) (citing *State v. Butler*, 261 S.C. 355, 358, 200 S.E.2d 70, 71 (1973)). Mr. Murdaugh agreed that is the correct standard. Reply to the State's Return, *Murdaugh*, Appellate Case No. 2023-000392 (Sept. 21, 2023) (quoting *State v. Ford*, 301 S.C. 485, 491, 392 S.E.2d 781, 784 (1990) (“In order to obtain leave from this Court to move for a new trial based on after-discovered evidence, an appellant must make a *prima facie* showing that a new trial is warranted.”)). The Court of Appeals concluded that standard was satisfied when it granted the motion to suspend the appeal and for leave to file the instant motion. Order, *Murdaugh*, Appellate Case No. 2023-000392 (Oct. 17, 2023). There has been no material change to the law or to the record before the Court

(other than the discovery of yet more examples of Ms. Hill’s dishonesty and malfeasance in office) since the Court of Appeals’ order. It therefore is the law of the case that a prima facie case has been made. *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) (“The doctrine of the law of the case prohibits issues [that] have been decided in a prior appeal from being relitigated in the trial court in the same case.”). Where a prima facie case is made, an evidentiary hearing is required. *Barnes v. Joyner*, 751 F.3d 229, 242 (4th Cir. 2014) (“[W]hen the defendant presents a credible allegation of communications or contact between a third party and a juror concerning the matter pending before the jury” the defendant has an “entitlement to an evidentiary hearing.” (citing *Remmer*, 347 U.S. 227)). The Court therefore must hold an evidentiary hearing on the merits of the motion for a new trial.

B. The State’s motions to strike should be denied.

In its response to the motion for a new trial, the State moves to strike (1) affidavits of paralegal Holli Miller, (2) anything statements regarding jury deliberations, and (3) any claims regarding Facebook posts, Ms. Hill’s book deal, or “post-trial media interactions.” It is unclear what purpose striking anything from the motion for a new trial would accomplish, given that it is the law of the case that a prima facie case has been made, that an evidentiary hearing therefore is required, that an evidentiary hearing has been scheduled, and that the motion will be decided on the evidence presented to the Court at the hearing and not on attorney argument made before the Court receives any evidence whatsoever. Nevertheless, since the State makes the argument, Mr. Murdaugh will briefly rebut it.

First, the affidavits of Holli Miller were offered only as evidence as to what certain jurors would say if called to testify at an evidentiary hearing. Of course, they are hearsay. All affidavits from persons who have not (yet) testified in court are hearsay. Rule 801(c), SCRE (“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in

evidence to prove the truth of the matter asserted.”). Hearsay is just an objection to the admissibility of evidence; it is not a basis to strike a filing. The purpose of Ms. Miller’s affidavits was to help obtain an evidentiary hearing, which has been accomplished. Obviously, they cannot prove Mr. Murdaugh’s is entitled to a new trial. Witness testimony in a courtroom will do that.

Second, there is no basis for the State’s motion to strike references to jury deliberations. Juror 630’s affidavit was freely given to support a public filing. Other jurors have spoken about the deliberations in national television interviews. Such statements may or may not be admissible as evidence at the merits evidentiary hearing, but Rule 606 of the South Carolina Rules of Evidence in no way supports striking public statements from a motion memorandum.

Third, the State correctly notes that the only relevance of the Facebook post Ms. Hill fabricated to remove Juror 785, her book plans, or her other post-trial actions, is to impeach Ms. Hill. The State argues attacking Ms. Hill’s character is “an outlandish theory” against “a dedicated public servant” that is “Immaterial, Impertinent, and Scandalous” and so should be struck. That is incorrect. Ms. Hill likely is the only witness the State can offer who can directly contradict Juror 630’s averments of jury tampering, and Ms. Hill has offered an affidavit doing exactly that. Resp. Opp’n Mot. New Trial Ex. A. Her credibility is the crux of the matter before the Court. The purpose of the evidentiary hearing is to allow the Court to decide whether it believes the word of Ms. Hill more than it believes the sworn testimony of one or more jurors. Anything that impeaches Ms. Hill is relevant. And the State’s rhetoric about Ms. Hill being “a dedicated public servant” unfairly maligned has not aged well in the two months since the State filed its response, to put it mildly. Ms. Hill is alleged to have stolen money, illegally sold access to the courthouse, conspired with her son to conduct illegal wiretaps, and even had her book removed from publication because of her plagiarism.

VIII. Conclusion

For the foregoing reasons, Mr. Murdaugh respectfully submits that when Ms. Hill's jury tampering is proven at the evidentiary hearing, the Court must grant the motion for a new trial.

Respectfully submitted,

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Attorneys for Richard Alexander Murdaugh

January 10, 2024
Columbia, South Carolina.

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT G

(Respondent's Second Brief)

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
	)	
Richard Alexander Murdaugh,	)	STATE'S REVISED PRE-HEARING BRIEF IN
	)	OPPOSITION TO DEFENSE MOTION FOR A
Defendant.	)	NEW TRIAL
	)	

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 must 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. Tejada*, 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 muddled 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. Murdaugh’s 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. dissenting¹)). 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=IVDeYxQDfv9LkwHT&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: Juror 630. In the affidavit, Juror 630 attributes statements to Clerk Hill which resemble arguments made by the State, but she does not claim she 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, Juror 630's affidavit is affirmatively inconsistent with a *prima facie* showing necessary for an evidentiary hearing. See State's Response to Motion at 19-20.

Juror 785 – the so-called “egg juror” and landlord to Juror 630 – did not participate in deliberations and was removed for her 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, Juror 785 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. Deliberating jurors

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, Juror 785, who was removed by Judge Newman for talking to her husband and tenants 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 Juror 785, the spouse, and the tenants, as well as Judge Newman's ruling on the issue finding the juror should be removed for her violation of instructions.

The State would object under Rules 401-403, SCRE to any testimony from Juror 785 as to her 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 Juror 785's claims about conversations she had after the trial with people such as Daindridge or Webb.

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. Clerk of Court Hill

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 Juror 785, 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 Juror 785, and her 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. Courthouse staff

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 Juror 785 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 tenants of Juror 785, as well as the person who sent the email upon hearing from a coworker that Juror 785 was talking about the case and expressing an opinion during trial – which was why she 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 Juror 785, 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, Juror 785 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,

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January 10, 2024

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT H

(Appellant's Reply Brief)

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

State of South Carolina,

v.

Richard Alexander Murdaugh,

Defendant.

**COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

Indictment Nos. 2022-GS-15-00592, -593,
-594, and -595

**DEFENDANT’S REPLY TO THE
STATE’S PRE-HEARING BRIEF**

Defendant Richard Alexander Murdaugh, through undersigned counsel, hereby replies to the re-submitted pre-hearing brief the State submitted to the Court but did not file or otherwise make available to the public, pursuant to the Court’s direction on January 4, 2024.

I. Introduction

On October 27, 2023, Mr. Murdaugh filed a motion for a new trial based on after-discovered evidence, having obtained leave from the Court of Appeals to suspend his appeal of his convictions to file the motion. His motion alleges that Rebecca Hill, the elected Clerk of Court for Colleton County, had extensive private communications with members of the jury during trial. This allegation was supported by sworn affidavits of jurors and a witness to juror interviews, testimony at *in camera* proceedings, and other evidence including Ms. Hill’s own book. The subject matter of Ms. Hill’s alleged communications was the evidence being presented at trial. Mr. Murdaugh alleges that an elected state official deliberately violated his constitutional right to a fair trial before an impartial jury. If that allegation is proven, the law requires a new trial.

On December 21, 2023, the Court instructed the parties to submit pre-hearing briefs by January 3, 2024. Mr. Murdaugh submitted a 21-page brief (approximately 19 pages excluding caption and signature block). The State submitted a 7-page brief, which excluding the caption and signature page was only 5 pages long, half of which was dedicated to arguing that the Court should not hold an evidentiary hearing at all even though the Court has already set the evidentiary hearing

dates. On January 4, 2024, the Court instructed the parties to resubmit their briefs answering the following questions directly:

1. List all potential witnesses you plan to call during the evidentiary hearing.
 - a. List any objections or challenges you plan to make to opposing party's witnesses. I understand you may not have an exact list but you can predict the opposing side's intentions as far as witnesses.
2. List all exhibits you plan to introduce during the evidentiary hearing.
 - a. Again, list any objection or challenges to opposing party's exhibits.
3. Clarify your argument as to whether the Defendant is entitled to new trial or not.
 - a. Specifically, clarify the argument you will make during the evidentiary hearing. I've already decided an evidentiary hearing will occur. The mere fact that I have set the matter to include an evidentiary hearing does not mean I have decided any issue in the case at the present.
4. Any procedural issues which you feel may affect the evidentiary hearing:
 - a. Issues regarding the subpoena of specific witnesses.
 - b. Your position regarding how the court should receive testimony. Whether any witness testimony should be conducted in camera rather than in open court.
5. Any other issues regarding the conduct for the hearing of the merits of the motion.

The Court further stated, "I understand that you may not want these particular details on the public record until the evidentiary hearing or the status conference. You are welcome to send the revised briefs to me directly without filing."

On January 10, 2024, Mr. Murdaugh filed his revised brief, 32 pages long, making it available to the public. The State submitted its revised brief, 31 pages long directly to the Court, with a cover email stating, "We are electing at this time to just send the brief to the Court and defense counsel rather than filing." The State's revised brief, six times longer than its publicly

available brief, contains many novel legal arguments purporting to explain why the Court should avoid determining whether Ms. Hill tampered with the jury during the trial. What it lacks is any claim that the facts will show Ms. Hill did not tamper with the jury during the trial.

The State's new brief is organized under four top headings, "Burden of Proof," Motion Untimely," "Evidentiary Hearing Unnecessary," and "Witnesses, Exhibits, and Procedure," to which Mr. Murdaugh replies below (except for the State's argument against holding an evidentiary hearing, which the Court has already decided will occur).

II. Reply to State's "Burden of Proof" arguments.

Mr. Murdaugh does not have a burden to prove. Where there

In a criminal case, any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial, if not made in pursuance of known rules of the court and the instructions and directions of the court made during the trial, with full knowledge of the parties. The presumption is not conclusive, but the burden rests heavily upon the Government to establish, after notice to and hearing of the defendant, that such contact with the juror was harmless to the defendant.

Remmer v. United States, 347 U.S. 227, 229 (1954). Mr. Murdaugh argues this "burden shifting" under *Remmer* is irrelevant in this case because where a state official communicates to the jury about the merits of the case before it, our Court of Appeals subsequently sharpened and simplified the standard:

In this case, there was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained. When there has been such a communication, 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.

State v. Cameron, 311 S.C. 204, 208, 428 S.E.2d 10, 12 (Ct. App. 1993) (internal quotation marks and alteration marks omitted).

The *Cameron* standard is slightly different than the standard in *Remmer* in that it restricts the presumption to egregious cases of external influence but does not admit the possibility that such egregious cases could be harmless. *Cf. Connecticut v. Berrios*, 129 A.3d 696, 709–11 (Conn. 2016) (collecting federal and state cases when discussing majority position that “the *Remmer* presumption is still good law with respect to egregious external interference with the jury’s deliberative process via private communication, contact, or tampering with jurors about the matter”).¹ In that, it presages our Supreme Court’s holding in *Green*: “The attempted bribery of a juror in *Remmer*—conduct which goes to the heart of the merits of the case on trial—is a far cry from the circumstances presented in this case. The bailiff’s actions here—though improper—did not touch the merits” *State v. Green*, 432 S.C. 97, 100, 851 S.E.2d 440, 441 (2020). But, of course, the logic of *Cameron* does directly follow the reasoning of *Parker*, *Remmer*, *Mattox*, and a line of cases extending to early English law predating our Republic by centuries. *See* Def.’s Revised Prehearing Br. 18–20 (citing, *inter alia*, *Parker v. Gladden*, 385 U.S. 363 (1966) (per curiam); *Remmer*; *Mattox v. United States*, 146 U.S. 140 (1892); *Lord Delamere’s Case*, 4 Harg. St. T. 232 (Eng. 1685)).

Mr. Murdaugh argues those cases nevertheless are not, technically, relevant because this Court is a trial court called upon to follow *Cameron*, not to agree with it. The State, however, broadly offers four arguments against application of the *Cameron* standard in this case. Each is unavailing.

First, the State argues this Court should ignore published appellate authority that is directly on point because *Smith v. Phillips* purportedly abrogated *Remmer*, and that *Green* recognizes this

¹ Mr. Murdaugh’s revised pretrial brief emphasized language in this quote but inadvertently failed to provide parenthetical noting he added the emphasis.

by “unanimously declining to adopt *Remmer* . . . and its presumptive prejudice standard in every instance of improper contact.” State’s Second Prehearing Br. 3–4 (citing *Smith v. Phillips*, 455 U.S. 209 (1982) and *State v. Green*, 432 S.C. 97, 851 S.E.2d 440 (2020)). As Mr. Murdaugh argues extensively in his revised brief, that is not correct. There is a circuit split on the issue and the Fourth Circuit takes the majority position in rejecting the State’s argument: “We cannot accept the Commonwealth’s argument that the presumption of prejudice attaching to extrajudicial communications was overturned by the Supreme Court in *Tanner v. United States*, 483 U.S. 107 (1987), or *Smith v. Phillips*, 455 U.S. 209 (1982).” *Stockton v. Virginia*, 852 F.2d 740, 743–44 (4th Cir. 1988) (parallel citations omitted).² The South Carolina Supreme Court is not obliged to follow the Fourth Circuit’s position on this split, but South Carolina courts often defer to the Fourth Circuit in such situations. See *Limehouse v. Hulsey*, 404 S.C. 93, 108–09, 744 S.E.2d 566, 575 (2013). The Court of Appeal’s *Green* opinion expressly discussed the circuit split. 427 S.C. 223, 235, 830 S.E.2d 711, 717 (Ct. App. 2019), *aff’d as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020). Our Supreme Court affirmed the decision as modified without rejecting Fourth Circuit case law, instead stating “[w]e are not persuaded that the *Remmer* presumption of prejudice applied here” and “we decline to adopt the *Remmer* presumption of prejudice in every instance of an inappropriate bailiff communication to a juror”—which would be a very tortured way of saying the *Remmer* presumption of prejudice no longer applies at all. *Green*, 432 S.C. at 100–101, 851 S.E.2d at 441. *Green* of course does not say that; rather, it says *Remmer* does apply in certain

² Significantly, Justice O’Connor explicitly stated in her concurring opinion in *Smith*, that the Court’s holding did not foreclose the use of presumptive implied bias in appropriate cases. 455 U.S. 209, 224, 102 S. Ct. 940, 949, 71 L. Ed. 2d 78 (1982)

cases, just not in cases in which the state actor's actions "though improper—did not touch the merits" of the matter before the jury. *Id.*

Second, the State argues "*Parker* is factually distinguishable because" in *Parker* "one of the jurors testified that she was prejudiced by the statements." State's Second Prehearing Br. 10 (citing 385 U.S. at 365). The State fails to note that in the very next sentence the Court went on to hold that "Aside from this [referring to the testimony of the juror that she was prejudiced], we believe that the unauthorized conduct of the bailiff involves such a probability that prejudice will result that it is deemed inherently lacking in due process." *Id.* (internal quotation marks omitted). In other words, as discussed in *Cameron* and *Green*, when a state actor's communication concerns a harmful "subject matter" or the "merits" of a criminal case, it does not matter whether the jurors say they were prejudiced.

Third, the State argues that framing a state official's intentional jury tampering during trial as a structural error is without procedural support. Mr. Murdaugh will not repeat in this Reply his discussion of the many cases that provide such support. *E.g.*, Def.'s Revised Prehearing Br. 18–20; *see also Parker*, 385 U.S. at 365 ("[W]e believe that the unauthorized conduct of the bailiff 'involves such a probability that prejudice will result that it is deemed inherently lacking in due process.'" (quoting *Estes v. Texas*, 381 U.S. 532, 542–43 (1965))).³ Mr. Murdaugh merely adds that the issue here is not whether a juror engaged in misconduct, not whether some member of the public engaged in misconduct, not whether a defendant engaged in misconduct, and not even

³ In identifying deliberate jury tampering by a state actor during a criminal trial as structural error, *Parker* quotes from its opinion in *Estes* issued the previous year, which more fully stated: "It is true that in most cases involving claims of due process deprivations we require a showing of identifiable prejudice to the accused. Nevertheless, at times a procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process." 381 U.S. at 542–43. That is the definition of structural error.

whether a bailiff made an unguarded statement that he should have known a juror would hear (as in *State v. Rowell*, 75 S.C. 494, 56 S.E. 23 (1906)⁴). The issue is whether an elected state official using the power of her office to enter the jury room during trial to advocate against the defendant to promote her own interests is a structural error in the conduct under the trial, under the principle that all evidence and argument presented to the jury must be presented in the courtroom. *Turner v. Louisiana*, 379 U.S. 466, 472–73 (“In a constitutional sense, trial by jury in a criminal case necessarily implies at the very least that the ‘evidence developed’ against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel.”).

The State complains that this sort of tampering happens so commonly that it “cannot overstate the impossibility” of considering it a structural error. State’s Second Prehearing Br. 12. That exactly reverses the issue. To the undersigned’s knowledge, nothing like Ms. Hill’s conduct has ever happened before this case. Most likely it will never happen again. The impossibility should be found in excusing Ms. Hill’s conduct with post hoc reasoning that her tampering probably did not change the outcome of the trial. If Ms. Hill’s misconduct is excused, then truly anything goes.

Fourth, the State argues this Court should simply ignore the controlling precedent of *Cameron* because a judge dissented, because it was somehow abrogated by *Smtih* eleven years before it issued, or because its reasoning is otherwise flawed. Of course, a dissenting opinion in no way changes the trial court’s obligation to faithfully follow controlling precedent. *Cameron*

⁴ The State relies heavily on *State v. Rowell* in support of its position. This 117-year-old case decision is inapposite because the *Rowell* decision predates the incorporation of the Sixth Amendment right to an impartial jury to the states through the due process clause of the Fourteenth Amendment by *Parker v. Gladden*, 385 U.S. 363, 364 (1966). In other words, *Parker* abrogated *Rowell* on this point.

was cited and discussed with approval in the Court of Appeal's *Green* decision, which contrasted the harmless bailiff conduct there with the conduct requiring a mistrial in *Cameron*. 427 S.C. at 237, 830 S.E.2d at 717. Our Supreme Court affirmed that decision as modified without mentioning *Cameron* at all. If the Supreme Court meant to overrule *Cameron*, it would have said so. Instead, it corrected the Court of Appeals reasoning to conform with the reasoning in *Cameron*. *Cameron* post-dates *Smith* by eleven years and so could not have been abrogated by it. If *Cameron* court misapprehended the meaning of *Smith* as to the issue before it (it did not), that would simply mean *Cameron* was wrongly decided, which is not an issue for the trial court's consideration. Neither is the State's complaint that the *Cameron* opinion purportedly "is also not entirely consistent internally." Trial courts do not reject controlling precedent because they disagree with the appellate court's reasoning—appellate courts correct trial courts' errors, not the other way around.

Cameron sets forth the controlling legal standard:

In this case, there was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained. When there has been such a communication, 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.

311 S.C. at 208, 428 S.E.2d at 12.⁵ That decision has not been overruled by any later decision of our Supreme Court or the United States Supreme Court. It therefore is binding authority which this Court must follow faithfully. If the State disagrees with the standard set forth in *Cameron*, it can explain why in its appellate brief and seek leave for oral argument against precedent on appeal. See Rule 217, SCACR.

⁵ The State appears to have dropped its claim that the standard Mr. Murdaugh quotes from *Cameron* is not in fact the one and only standard set forth in *Cameron*. Compare State's Second Prehearing Br. 14 with State's Initial Prehearing Br. 3 n.2.

III. Reply to State’s “Motion Untimely” arguments.

The State argues,

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.

State’s Second Prehearing Br. 16. This argument is unsound for four reasons.

First, there is no legal requirement for an affidavit from Mr. Murdaugh stating that he did not know Ms. Hill was tampering with the jury during his trial. The State relies exclusively on an out-of-context, cherry-picked quote from *State v. DeAngelis*, a 52-year-old case that has never been cited for that proposition. 256 S.C. 364, 182 S.E.2d 732 (1971). *DeAngelis* affirmed a trial court’s denial of a motion for a new trial, in which the defendant sought a “new trial” as a device to challenge his own guilty plea that occurred after a jury was empaneled but before trial commenced. *Id.* at 368–69, 182 S.E.2d at 733. His motion for a “new trial” was supported only by two affidavits from other persons criminally involved in the crimes for which he was accused and one from his own attorney. *Id.* at 369–71, 182 S.E.2d at 734. The trial court determined that, among other issues, an affidavit was at least needed from the defendant, given that he was challenging his own decision to plead guilty, and it denied the motion for a new trial. *Id.* at 371, 182 S.E.2d at 734–35. The Supreme Court affirmed. *Id.* at 372, 182 S.E.2d at 735. In 52 years, the fact-specific decision in *DeAngelis* has never been cited by any court for the proposition that a motion for a new trial always requires an affidavit from the defendant, regardless of the circumstances or the factual basis for the motion.

Mr. Murdaugh refuted this argument in the Court of Appeals, but to avoid delay additionally provided an affidavit from Mr. Murdaugh stating the obvious, that he did not know of the Clerk of Court's improper communication with the jury until after the trial concluded. That affidavit states, in its entirety,

I, Richard Alexander Murdaugh, after being duly sworn, depose and state that I did not have any knowledge or information that the Colleton County Clerk of Court, Rebecca Hill, or anyone else, had communications with the jury during the trial in the above-captioned matter about the evidence, jury deliberations, and the other matters identified in the proposed Motion for New Trial filed as an exhibit in the Court of Appeals, until after the jury rendered its verdict and I was sentenced.

Exhibit A to Reply to State's Return to Motion to Suspend Appeal, *State v. Murdaugh*, Appellate Case No. 2023-000392 (Sept. 21, 2023).

The State now asserts it "has reason to believe Murdaugh's affidavit is untruthful," which necessarily means that it believes Mr. Murdaugh had knowledge during trial that Ms. Hill was communicating with the jury outside the courtroom to secure his conviction for murder but remained silent about that fact until six months after his conviction and sentencing. State's Second Prehearing Br. 16. Since he was in custody during the trial, he could only have learned that from his counsel. So, the State says Mr. Murdaugh's lawyers told him Ms. Hill was tampering with the jury, and he agreed the best course of action would be to remain silent, be convicted and sentenced for murdering his own family, then file a post-trial motion six months later. No reasonable person believes that.

Second, the State claims Mr. Murdaugh's motion for a new trial is defective because it does not indicate how or when he learned of the allegations contained therein. Again, this argument was refuted in the Court of Appeals. The "how" is that jurors and other witnesses spoke to Mr. Murdaugh's counsel after the trial. The "when" is on or about the dates on the affidavits regarding those interviews. Mot. Exs. A, F, H to Ex. 1 (affidavits from witnesses dated August 14, August

18, and August 13, 2023, respectively); Mot. Exs. B ¶ 1, J ¶ 1 to Ex. 1 (affidavits from defense paralegal regarding interviews with jurors stated to have occurred on August 6, 2023); Mot. Ex. G ¶ 2 to Ex. 1 (affidavit from defense attorney regarding Facebook download conducted at a witness interview stated to have occurred on August 18, 2023). If the Court is so inclined, it can ask the witnesses to confirm when they were first contacted by Mr. Murdaugh's counsel.

Third, the State's assertion that Mr. Murdaugh's counsel should have immediately filed a frivolous motion for a new trial the moment they first heard any unsubstantiated rumor about jury issues is absurd. The State provides many quotes from media statements by Mr. Murdaugh's counsel (which explicitly state that rumors were first heard *after* the trial), but even those quotes include the statement "We didn't know exactly what, um, and we went on a campaign to find out what." State's Second Prehearing Br. 17. Of course, the State does not really believe defense counsel could or should have immediately filed a motion after trial demanding a new trial because they heard rumors giving them "some indication from folks in the courtroom that there was something untoward that had happened in the jury room" without first investigating "exactly what" actually happened. The proper course of action was to investigate the rumors. That is what Mr. Murdaugh's counsel did, but no one would speak with them until Ms. Hill published her book. As Mr. Griffin stated to the media in the press conference the State repeatedly cites, *see* State's Second Prehearing Br. 17 n.5, n.6, n.7, after Ms. Hill published her book, "That zone of silence collapsed, and jurors were upset about that, the ones we talked with, and they were more than willing to come forward."

Fourth, the State makes this argument for an improper purpose. As the State itself explains, its purpose is to obtain discovery into how the defense learned about Ms. Hill's jury tampering, a subject that has nothing to do with whether Ms. Hill actually engaged in jury tampering. The State

wants an examination of Mr. Murdaugh's lawyers and attorney Joseph M. McCulloch, Jr., who represents certain jurors who have given statements the State does not like, to establish that Mr. McCulloch is a sinister "agent of Murdaugh." *Id.* at 18. It is incredible that the State would argue, in the same brief, both that the Court should inquire into how Mr. Murdaugh's lawyers learned about Ms. Hill's jury tampering and that the Court should **not** inquire into whether Ms. Hill actually tampered with the jury. *Compare* State's Second Br. 18 *with* State's Second Br. 20–21. It is rather unlikely any juror would vote to convict Mr. Murdaugh of murdering his own family, then immediately decide to corruptly work with Mr. Murdaugh's counsel to overturn the verdict, all while maintaining his anonymity and seeking no money or publicity for himself. It is rather more likely that the Clerk of Court who has stolen public money, sold access to the courthouse, conspired to engage in illegal wiretapping, invented a fictitious Facebook post in an attempt to have a juror removed, covertly used the defense's trial graphics contractor as a spy during and after trial, sent *ex parte* emails to the prosecution with suggestions for impeaching the defense's expert during the testimony of the expert, organized juror appearances on national television, published a book on the trial that was withdrawn from publication because she plagiarized a reporter covering the trial, is the subject of multiple ethics commission and criminal investigations, and who was not even allowed to have a county credit card because of her history of misappropriation of funds, engaged in self-interested jury tampering and her distasteful self-promotion finally caused jurors to come forward.

IV. Reply to State's "Witnesses, Exhibits, and Procedure" arguments.

The State argues that the jurors should only be asked two questions:

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?

State's Second Prehearing Br. 20. According to the State, no juror should be asked if Ms. Hill tampered with the jury if the jurors testify that they obeyed the trial judge's jury charge. A juror would need to confess to willfully disregarding Judge Newman's instructions as a prerequisite to even ask what Ms. Hill did or did not do. The State even wants a leading "As you were instructed to do by Judge Newman" appended to the question just to make sure the jurors know how they should answer. This argument should be rejected for four reasons.

First, an evidentiary hearing is required, and the purpose of an evidentiary hearing is not merely to poll the jury again. The purpose is to allow the party with the burden of production the opportunity to produce evidence meeting the burden of persuasion required (here, a preponderance of the evidence) to obtain the relief it seeks. If Mr. Murdaugh is not allowed to ask jurors if Ms. Hill actually said what he alleges she said, he will not have been afforded that opportunity and no evidentiary hearing will have been held, violating not just generally controlling appellate case law, but also the controlling appellate law of *this* case. See Def.'s Revised Prehearing Br. 29–30 (explaining why the law of the case requires an evidentiary hearing).

Second, the State claims that our Supreme Court in *Green* approved the trial court only asking these two questions when investigating improper contact by a bailiff with jurors during trial by a state official. State's Second Prehearing Br. 20. Of course, the trial court in *Green* asked the jurors whether the bailiff said anything to them, and if so, what was said, and this Court should do likewise regarding Ms. Hill. In *Green*, Judge Hocker asked every juror if they had direct communications with the bailiffs, even after they answered "no" when asked whether their verdict was influenced by any communication with any bailiff. See Record on Appeal 555–77, *State v.*

Green, Appellate Case No. 2017-001332 (attached as **Exhibit A**). When there was a communication, he asked what the communication was. *Id.*

Third, the second proposed question violates Rule 606(b) of the South Carolina Rules of Evidence. A version of the question was asked in *Green*, but the Rule 606(b) issue was not before the Court of Appeals. 427 S.C. 223, 236 n.3, 830 S.E.2d 711, 717 (Ct. App. 2019), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020) (“Not before us is the issue of how far a trial court can go in questioning jurors post-verdict without crossing the bounds of Rule 606(b), SCRE.”). The Supreme Court decision modifying the Court of Appeals opinion has no discussion of Rule 606(b). *See generally Green*, 432 S.C. 97, 851 S.E.2d 440 (2020).

The Fourth Circuit explained, in a case cited by the Court of Appeals in *Green*:

The rules of evidence make it difficult for either party to offer direct proof of the impact that an improper contact may have had on the deliberations of the jury. *See* Fed. R. Evid. 606(b); *Mattox*, 146 U.S. at 149, 13 S.Ct. at 53 (quoting *Woodward v. Leavitt*, 107 Mass. 453 (1871)) (“the evidence of jurors as to the motives and influences which affected their deliberations, is **inadmissible either to impeach or to support the verdict**”). The right to an impartial jury belongs to the defendant, however; thus a rebuttable presumption of prejudice attaches to the impermissible communication. While juror testimony concerning the effect of the outside communication on the minds of the jurors is inadmissible, the state may rebut the presumption of prejudice through whatever circumstantial evidence is available, including juror testimony on the facts and circumstances surrounding the extraneous communication. This circuit has held in the civil context that the party supporting the jury's verdict must overcome the rebuttable presumption of prejudice that attaches once an impermissible contact with the jury has been established. *Haley v. Blue Ridge Transfer Co.*, 802 F.2d 1532, 1535–37 (4th Cir.1986). If this was true in the civil context, it would appear no less applicable to a criminal trial.

Stockton v. Virginia, 852 F.2d 740, 743–44 (4th Cir. 1988) (emphasis added); *cf.* Rule 606, SCRE note (stating “[t]he language of this rule is identical to the federal rule”). Another federal case cited by the Court of Appeals in *Green* observes, “The rule forbidding the questioning of jurors concerning the impact of improper communications is the law not only in this circuit but in every

other circuit in which the question has arisen.” *Haugh v. Jones & Laughlin Steel Corp.*, 949 F.2d 914, 918 (7th Cir. 1991) (collecting cases).

Thus, the Court cannot ask jurors to testify as to the effect Ms. Hill’s communications had on their minds as they deliberated in the jury room, either directly or through the backhanded leading question the State proposes. Mr. Murdaugh has no burden to show prejudice; rather, the State must use circumstantial evidence to show the communications did not prejudice the outcome. It could do so, for example, by showing the communications never reached the ears of a deliberating juror. That is unlikely in a case where a deliberating juror has submitted an affidavit stating she heard the communications. Where, as here, the communication is from a state official in a criminal case and did reach at least one deliberating juror, *Cameron* greatly simplifies the issue for the State: The State must show that the communication did not bear on the merits of the matter before the jury, which is exactly what our Supreme Court held the State accomplished in *Green*. 432 S.C. at 100, 851 S.E.2d at 441. If the communications did not bear on the merits, the State has no burden to prove anything. *Id.* If they did, the result is a structural error requiring a new trial. *See Cameron*, 311 S.C. at 208, 428 S.E.2d at 12; *see also Parker*, 385 U.S. at 365 (“[W]e believe that the unauthorized conduct of the bailiff ‘involves such a probability that prejudice will result that it is deemed inherently lacking in due process.’” (quoting *Estes v. Texas*, 381 U.S. 532, 542–43 (1965))).

Fourth, the State’s reasoning has no limiting principle and leads to absurd results. By the State’s reasoning, no defendant has a right to a trial free from jury tampering by a state official, no matter how extreme, if jurors testify that they would have reached the same verdict regardless. According to the State, if Ms. Hill had the jury room decorated like a grade-school classroom with colorful signs saying “Murdaugh is guilty,” that would not violate Mr. Murdaugh’s right to a fair

trial (at least not in any way he could enforce) so long as jurors did not testify that they voted guilty because of the décor. If Ms. Hill entered the jury room with a firearm and threatened the jurors with death unless they voted to convict, according to the State that would not violate Mr. Murdaugh's right to a fair trial (again, at least not in any way he could enforce) so long as the jurors testified that they bravely obeyed the trial judge's jury charge.

* * *

The State then proceeds to object to testimony from any non-deliberating juror, even those who were percipient witnesses to Ms. Hill's jury tampering. The State's reasoning is such jurors cannot testify as to the impact on deliberations. As explained above, no juror can do that. This objection is just another example of the State desperately trying to prevent the Court from determining the truth of Mr. Murdaugh's allegations. The percipient witnesses to Ms. Hill's misconduct in the jury room are of course relevant to an evidentiary hearing in which Mr. Murdaugh has the burden to prove her misconduct.

The State also asserts various unexplained Rule 403 objections. Rule 403 objections are irrelevant in a cause tried to the bench. *See, e.g., Schultz v. Butcher*, 24 F.3d 626, 632 (4th Cir. 1994) ("Rule 403 was designed to keep evidence not germane to any issue outside the purview of the jury's consideration. For a bench trial, we are confident that the district court can hear relevant evidence, weigh its probative value and reject any improper inferences.").

The State objects to any impeachment of Ms. Hill based on conduct during the trial (the "Facebook issue") or outside the time of the trial. It is impossible to respond to general assertions of rules of evidence not tied to specific possible evidentiary proffers. Mr. Murdaugh discussed possible evidentiary objections in his revised prehearing brief which he will not belabor again here, Def.'s Prehearing Br. 3–8, but generally notes Rule 608(b) allows, within the discretion of

the Court, inquiring on cross-examination into the witness's character for untruthfulness, Rule 405(a) allows inquiry into specific instances of conduct on cross-examination where a person's character trait is at issue, Rule 608(c) allows a party to offer proof of bias or any motive to misrepresent for impeachment purposes, and Rule 613(b) allows use of extrinsic evidence of a prior inconsistent statement for impeachment if the prior inconsistent statement is denied.

The State provides specific examples of the "Facebook issue," plagiarism, and criminal wiretapping as "irrelevant." Plagiarism about the trial itself in the book that led to this motion, of such a degree as to cause the book to be pulled from publication, certainly is relevant to whether Ms. Hill's word can be taken over the word of anonymous jurors who have not money or fame from their participation in this case. The same is true of criminal wiretapping in response to, of all things, ethics complaints from her own employees. As for Facebook, discovery Mr. Murdaugh has received from Colleton County only within the last few days **proves** Ms. Hill fabricated the Facebook post and then lied to Judge Newman about it. Ms. Hill received an email from someone in Indiana watching the trial livestream online through a Facebook link. There was a Facebook chat in which someone claiming to be the ex-husband of a juror said his ex-wife was telling people she was on the jury and had already decided Mr. Murdaugh was guilty. The first and last names of the juror were included in the post, leaving no doubt the juror at issue was **not** Juror 785. The Indiana spectator emailed a screenshot of the chat message from her cell phone to Ms. Hill.

Ms. Hill did not act on the email because the juror at issue purportedly was going to vote guilty, which conformed to her interests. But Ms. Hill believed Juror 785 might not vote guilty, based on the conversations with the jury foreperson to which she admitted in her interview with SLED. The emailed Facebook post gave her the idea to invent one about Juror 785, which she would say she saw on the "Walterboro Word of Mouth" group instead of having received it by an

email she would otherwise be asked to produce. When Judge Newman asked her to produce the Facebook post about Juror 785 to him, she lied and said it had been deleted. In fact, the “real” Facebook post was still sitting in her email. This is proven by the fact that defense counsel obtained a copy of it when they obtained her emails from Colleton County. She enlisted her staff to assist in her corroborating her lie to Judge Newman that she had seen it posted somewhere but it was subsequently deleted. She even sold that lie for money in her now-withdrawn plagiarized book. The reason she lied was that her illegal private conversations with the jury foreperson made her believe Juror 785 might vote not guilty and she wanted to remove her from the jury. This information must be relevant to whether Ms. Hill is once again lying when she denies tampering with the jury.

V. Conclusion

For the foregoing reasons, Mr. Murdaugh respectfully submits that when Ms. Hill’s jury tampering is proven at the evidentiary hearing, the Court must grant the motion for a new trial, and that the State’s arguments to the contrary are without merit.

Respectfully submitted,

s/Richard A. Harpootlian

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January 15, 2024
Columbia, South Carolina.

EXHIBIT A

(Excerpt from *State v. Fabian LaMichael
R. Green* Record on Appeal)

VOLUME II of II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Donald B. Hocker, Circuit Court Judge

RECEIVED
JUL 16 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FABIAN LAMICHAEL R. GREEN,

APPELLANT

APPELLATE CASE NO 2017-001332

RECORD ON APPEAL

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1 courtroom at this time.

2 (Whereupon, these individuals as indicated by the
3 Court exited the courtroom.)

4 THE COURT: I am going to have them sworn in but I
5 will take care of that, I will take care of that. And,
6 Johnny, he can be just on the other side of the door.

7 (Whereupon, Juror, Ameca Thomas entered the
8 courtroom.)

9 THE COURT: Ms. Thomas, if you will have a seat, I am
10 going to swear you in.

11 AMECA THOMAS, being
12 first duly sworn, testified as follows:

13 THE COURT: Again, I just want to make sure your
14 guilty verdict on both charges was that and is that still
15 your verdict in the case?

16 MS. THOMAS: Yes, sir.

17 THE COURT: Okay. Is your verdict based one-hundred
18 percent on the evidence and testimony and the law
19 presented at this trial?

20 MS. THOMAS: Yes, sir.

21 THE COURT: Okay. Was your verdict influenced in any
22 way whatsoever by any communications that you may have had
23 with any of the bailiffs or any other person outside of
24 the twelve member jury?

25 MS. THOMAS: No, sir.

1 THE COURT: All right. If you had any
2 communications, if you had any communications with any of
3 the bailiffs can you relay to me what those communications
4 were, if you had any.

5 MS. THOMAS: Did not have any.

6 THE COURT: Okay, alright, okay. Thank you, Ma'am.
7 I am going to put you in another room, then bring
8 everybody else, it is still going to be a little bit. I
9 eventually will bring the whole jury back in before I
10 release you. If you can assist, Madam Clerk, on that.

11 (Whereupon, Ms. Thomas exited the courtroom.)

12 (Whereupon, Juror, Rachel Hughes entered the
13 courtroom.)

14 THE COURT: Have a seat and I just need to have you
15 sworn in and ask you a couple of questions.

16 RACHEL HUGHES, being
17 first duly sworn, testified as follows:

18 THE COURT: Can you give me your name, please.

19 MS. HUGHES: Rachel Hughes.

20 THE COURT: Ms. Hughes, I just need to ask you again,
21 the verdict of guilty on both charges, was that and is it
22 still that, your verdict in this case?

23 MS. HUGHES: Yes, sir.

24 THE COURT: Okay. Was your verdict based one-hundred
25 percent on the testimony, evidence and the law presented

1 in this case?

2 MS. HUGHES: Yes, sir.

3 THE COURT: Okay. Was your verdict in any way
4 influenced by any communications that you may have had
5 with any of the bailiffs in this case or anybody outside
6 of the twelve member jury?

7 MS. HUGHES: No, sir.

8 THE COURT: Have you had any communications during
9 this week with any of the bailiffs or any third party
10 outside of the twelve member jury?

11 MS. HUGHES: No, sir.

12 THE COURT: Alright. Thank you, go to another room,
13 I will bring the whole group back out after I do this
14 individually. Okay. Thank you, Ma'am.

15 (Whereupon, Ms. Hughes exited the courtroom.)

16 (Whereupon, Juror, Jacqueline Noffz entered the
17 courtroom.)

18 THE COURT: Have a seat and I just need to have you
19 sworn in.

20 JACQUELINE NOFFZ, being
21 first duly sworn, testified as follows:

22 THE COURT: Give us your name, please.

23 MS. NOFFZ: Jacqueline Noffz.

24 THE COURT: And, Ms. Noffz, your verdict of guilty on
25 both charges, was that and is that still your verdict in

1 this case?

2 MS. NOFFZ: Yes, sir.

3 THE COURT: Okay. Was your verdict based one-hundred
4 percent on the testimony, evidence and law presented in
5 this case?

6 MS. NOFFZ: Yes, sir.

7 THE COURT: Okay. Was your verdict in any way
8 influenced by any communications that you may have had
9 with any of the bailiffs or any third party outside of
10 this twelve person jury?

11 MS. NOFFZ: No, sir.

12 THE COURT: Did you have any communications with any
13 of the bailiffs or with any third parties outside of the
14 twelve member jury?

15 MS. NOFFZ: No, sir.

16 THE COURT: Alright. Thank you, Ma'am. She will
17 tell you where to go.

18 (Whereupon, Ms. Noffz exited the courtroom.)

19 So far my questions in keeping with our conversation?

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

21 MR. MOWRY: Yes, sir.

22 (Whereupon, Juror, Benjamin Bryson entered the
23 courtroom.)

24 THE COURT: Just have a seat in that first seat and I
25 need to have you sworn in.

1 BENJAMIN BRYSON, being
2 first duly sworn, testified as follows:

3 THE COURT: State your name, please.

4 MR. BRYSON: Benjamin Bryson.

5 THE COURT: Okay, Mr. Bryson, you can put your hand
6 down. Your verdict on guilty of both charges, was that
7 and is that still your verdict in this case?

8 MR. BRYSON: Yes, sir.

9 THE COURT: Was your verdict or is your verdict based
10 one-hundred percent on the testimony, evidence and the law
11 presented in this case?

12 MR. BRYSON: Yes, sir.

13 THE COURT: Okay. Was your verdict influenced, by
14 any means, in any communications that you may have had
15 with any of the bailiffs in this case, or any third party
16 outside of the twelve person jury?

17 MR. BRYSON: No, sir.

18 THE COURT: Did you have any communications with any
19 of the bailiffs or with any third party outside of the
20 twelve person jury?

21 MR. BRYSON: No, sir.

22 THE COURT: Thank you very much, sir. You can go
23 back, she is going to show you where to go.

24 (Whereupon, Mr. Bryson exited the courtroom.)

25 (Whereupon, Juror, Daniel Schrantz entered the

1 courtroom.)

2 THE COURT: Have a seat and I need to have you sworn
3 in.

4 DANIEL SCHRANTZ, being
5 first duly sworn, testified as follows:

6 THE COURT: Give me your name, please.

7 MR. SCHRANTZ: Daniel Nicholas Schrantz.

8 THE COURT: Okay. And your verdict of guilty on both
9 of the charges, was that and is that still your verdict in
10 this case?

11 MR. SCHRANTZ: Yes, sir.

12 THE COURT: Alright. Was your verdict and is your
13 verdict based totally, one-hundred percent, on the
14 testimony, evidence and law presented in this case?

15 MR. SCHRANTZ: Yes, sir.

16 THE COURT: Was your verdict influenced in any manner
17 whatsoever by any communications with any of the bailiffs
18 or any third party, not a part of the twelve person jury?

19 MR. SCHRANTZ: No, sir.

20 THE COURT: Have you had any communications with any
21 of the bailiffs or any third party, not a part of the
22 twelve person jury?

23 MR. SCHRANTZ: No, sir.

24 THE COURT: Thank you very much, sir. She will show
25 you where to go.

1 (Whereupon, Mr. Schrantz exited the courtroom.)

2 (Whereupon, Juror, Shannon Byers entered the
3 courtroom.)

4 THE COURT: Come on in and have a seat and I need to
5 have you sworn in, Ma'am.

6 SHANNON BYERS, being
7 first duly sworn, testified as follows:

8 THE COURT: Have a seat. Concerning your verdict of
9 guilty on both charges, was that and is that still your
10 verdict in this case?

11 MS. BYERS: Yes, sir.

12 THE COURT: Was your verdict and is your verdict
13 based one-hundred percent on the evidence, testimony and
14 law presented in this case?

15 MS. BYERS: Yes, sir.

16 THE COURT: Was your verdict influenced in any manner
17 whatsoever by any communications with any of the bailiffs
18 or any third party not a part of the twelve person jury?

19 MS. BYERS: No, sir.

20 THE COURT: Did you have any communications with any
21 of the bailiffs or any third party, not a part of the
22 jury?

23 MS. BYERS: No. Not about the case.

24 THE COURT: Tell me, did you have any communications
25 with the bailiffs?

1 MS. BYERS: Just if we could walk outside.

2 THE COURT: Okay. Anything else other, can we take a
3 break. I know that there was a break requested today,
4 this afternoon.

5 MS. BYERS: Right.

6 THE COURT: Any other communications?

7 MS. BYERS: No.

8 THE COURT: Thank you very much, Ma'am.

9 (Whereupon, Ms. Byers exited the courtroom.)

10 (Whereupon, Juror, Velvet Boston entered the
11 courtroom.)

12 THE COURT: I just need to have you sworn in.

13 VELVET BOSTON, being
14 first duly sworn, testified as follows:

15 THE COURT: Your verdict of guilty on both charges,
16 was that and is that still your verdict in this case?

17 MS. BOSTON: Yes.

18 THE COURT: You hesitated, are you sure?

19 MS. BOSTON: Yes.

20 THE COURT: Was and is your verdict based one-hundred
21 percent on the testimony, evidence and law presented in
22 this case?

23 MS. BOSTON: Yes.

24 THE COURT: Okay. Was your verdict influenced in any
25 manner whatsoever by any communications with any of the

1 bailiffs or any third party not connected with the twelve
2 person jury?

3 MS. BOSTON: No.

4 THE COURT: Did you have any communications with
5 either any of the bailiffs or with any third party, not a
6 part of the twelve person jury?

7 MS. BOSTON: No.

8 THE COURT: Thank you, Ma'am. She will show you
9 where to go.

10 (Whereupon, Ms. Boston exited the courtroom.)

11 (Whereupon, Juror, Stacy Ruff entered the courtroom.)

12 THE COURT: Have a seat right here, Ma'am. Thank
13 you. I need to have you sworn in.

14 STACY RUFF, being
15 first duly sworn, testified as follows:

16 THE COURT: Your verdict of guilty in this case on
17 both charges, was that and is that your verdict in this
18 case?

19 MS. RUFF: Yes, sir.

20 THE COURT: Was and is your verdict based one-hundred
21 percent on the testimony, evidence and law presented in
22 this case?

23 MS. RUFF: Yes, sir.

24 THE COURT: Was your verdict influenced in any manner
25 whatsoever by any communications with any of the bailiffs

1 or any third party not a part of the jury?

2 MS. RUFF: No, sir.

3 THE COURT: Did you have any communications with any
4 of the bailiffs or with any third party not a part of the
5 jury?

6 MS. RUFF: No, sir.

7 THE COURT: Okay, thank you, Ma'am.

8 (Whereupon, Ms. Ruff exited the courtroom.)

9 (Whereupon, Juror, Octavius Wheeler entered the
10 courtroom.)

11 THE COURT: Have a seat here and I need to swear you
12 in.

13 OCTAVIUS WHEELER, being
14 first duly sworn, testified as follows:

15 THE COURT: Your verdict of guilty on both charges in
16 this case, was that and is that currently your verdict in
17 this case?

18 MR. WHEELER: Yes, sir.

19 THE COURT: Is that a, yes sir?

20 MR. WHEELER: Yes, sir.

21 THE COURT: Okay. Was and is your verdict based
22 one-hundred percent on the testimony, evidence and law
23 presented to you in this case?

24 MR. WHEELER: Yes, sir.

25 THE COURT: Was your verdict influenced by any

1 communications with any bailiffs or any third party not
2 connected with the jury?

3 MR. WHEELER: No, sir.

4 THE COURT: Did you have any communications with any
5 of the bailiffs or with any third party not a part of the
6 jury?

7 MR. WHEELER: No, sir.

8 THE COURT: Okay, thank you, she will show you where
9 to go. Oh, we need your name for the record.

10 MR. WHEELER: Octavius Wheeler.

11 (Whereupon, Mr. Wheeler exited the courtroom.)

12 (Whereupon, Juror, Garrett Pace entered the
13 courtroom.)

14 THE COURT: Come on around, sir, and have a seat
15 right there. I need you to raise your right hand, let me
16 swear you in, please.

17 GARRETT PACE, being
18 first duly sworn, testified as follows:

19 THE COURT: Your verdict of guilty on both charges,
20 was that and is that currently your verdict in this case?

21 MR. GARRETT: Yes, sir.

22 THE COURT: Was and is your verdict based one-hundred
23 percent on the testimony, evidence and law presented to
24 you in this case?

25 MR. GARRETT: Yes, sir.

1 THE COURT: Was your verdict influenced in any way,
2 with any communications with any of the bailiffs or any
3 third party not connected with the jury in this case?

4 MR. GARRETT: No, sir.

5 THE COURT: Did you have any communications with any
6 of the bailiffs or with any third party not a part of the
7 jury in this case?

8 MR. GARRETT: Not on the case, no.

9 THE COURT: Did you have any communications with any
10 of the bailiffs or any third party?

11 MR. GARRETT: Just in a professional manner, yes.

12 THE COURT: Need to tell me what those communications
13 were.

14 MR. GARRETT: Just walking in, telling to come in,
15 come out. Did I talk to them, yes.

16 THE COURT: Anything related to this case?

17 MR. GARRETT: No, sir.

18 THE COURT: All right. And your name?

19 MR. GARRETT: Garrett Pace.

20 THE COURT: Mr. Pace, thank you, she will show you
21 where to go.

22 (Whereupon, Mr. Pace exited the courtroom.)

23 (Whereupon, Juror, Jocelyn Ellis entered the
24 courtroom.)

25 THE COURT: I need to swear you in, would your raise

1 your right hand, please, Ma'am.

2 JOCELYN ELLIS, being

3 first duly sworn, testified as follows:

4 THE COURT: Your name?

5 MS. ELLIS: Jocelyn Ellis.

6 THE COURT: And, Ms. Ellis, your verdict of guilty on
7 both charges in this case, was that and is that currently
8 your verdict in this case?

9 MS. ELLIS: Yes, sir.

10 THE COURT: Was and is your verdict based one-hundred
11 percent on the testimony, evidence and law presented to
12 you in this case.

13 MS. ELLIS: Yes, sir.

14 THE COURT: Was your verdict influenced in any manner
15 with any communications with any of the bailiffs and any
16 third party not a part of the jury in this case?

17 MS. ELLIS: No, sir.

18 THE COURT: Did you have any communications with any
19 of the bailiffs or with any third party not a part of the
20 jury in this case?

21 MS. ELLIS: No, sir.

22 THE COURT: Thank you, Ms. Ellis, she will show you
23 where to go.

24 (Whereupon, Ms. Ellis exited the courtroom.)

25 (Whereupon, Juror, Christopher Vaughn entered the

1 courtroom.)

2 THE COURT: Have a seat, I need to swear you in.

3 CHRISTOPHER VAUGHN, being

4 first duly sworn, testified as follows:

5 THE COURT: And your name again?

6 MR. VAUGHN: Chris Vaughn.

7 THE COURT: And, Mr. Vaughn, your verdict of guilty
8 on both charges in this case, was that and is that
9 currently your verdict in this case?

10 MR. VAUGHN: Yes.

11 THE COURT: Was and is your verdict in this case
12 based one-hundred percent on the testimony, evidence and
13 law presented to you in this case?

14 MR. VAUGHN: Absolutely.

15 THE COURT: Was your verdict influenced in any
16 manner, in any way, by any communications with any
17 bailiffs or any third party not a part of the jury in this
18 case?

19 MR. VAUGHN: No, Your Honor.

20 THE COURT: Did you have any communications with any
21 of the bailiffs or with any third party not a part of the
22 jury in this case?

23 MR. VAUGHN: Absolutely not, Your Honor.

24 THE COURT: Thank you, sir, she will show you where
25 to go.

1 (Whereupon, Mr. Vaughn exited the courtroom.)

2 THE COURT: I think that is the last one, Madam
3 Clerk?

4 MADAM CLERK: Yes, sir.

5 THE COURT: Okay. What I am going to do is bring the
6 jury back out, thank them for their service, give them the
7 little spill that I give and, but before they come in we
8 can certainly bring everybody back into the courtroom and
9 then excuse the jury. And then we can, I can hear any
10 matters you need to raise, you need to hold up first?

11 MR. SHAFFER: Well, Your Honor, I thought we were
12 going to question the two bailiffs as well. That is part
13 of my motion for a mistrial, I would like to question both
14 of them.

15 THE COURT: Okay, alright, we can do that then.
16 Which one do you want first?

17 MR. SHAFFER: It doesn't matter, whichever one.

18 THE COURT: Okay.

19 MR. MOWRY: Technically, Your Honor, I think the more
20 important thing with this is the, is the answers from the
21 jury.

22 THE COURT: Right. And I agree. I think that is
23 controlling as far as how they responded to my questions.
24 However, for there to be a complete record and since we
25 did have some informal talks with the bailiffs and I will

1 allow some, and I will allow you to conduct some limited
2 examination of both Mr. Easley and Mr. Bolt, just so we
3 can have a record even though I have to agree with the
4 State that I think the answers from the jury are, would be
5 controlling in this case. But I want to have a complete
6 record and I don't want to prevent you from not having a
7 complete record.

8 MR. SHAFFER: Okay, Your Honor.

9 THE COURT: Are you satisfied with you conducting
10 this?

11 MR. SHAFFER: Yes, Your Honor.

12 MR. MOWRY: Your Honor, if we could, on the motion
13 for a mistrial, if we could do that also with a cleared
14 courtroom so that is not--

15 THE COURT: Sure, I don't have a problem with that.
16 Since we are talking, you know, if, because I typically on
17 motions for a new trial I give the Defense lawyer, if it
18 is a guilty verdict, ten days to make any motions for a
19 new trial. I will be glad to give that time for motion
20 for a mistrial as well.

21 MR. SHAFFER: And, Your Honor, I actually to do a--

22 THE COURT: Excuse me?

23 MR. SHAFFER: I am happy to do it if the Court would
24 like me to within ten days. I think I can make it
25 sufficiently. I already have one realm for a mistrial

1 being the previous juror issue from the first day.

2 THE COURT: Right.

3 MR. SHAFFER: I was also going to move based off of
4 this. But I, I am happy to do it either way. I am happy
5 to do it orally or in writing.

6 THE COURT: No, we can do it now. I offer that if
7 counsel wants some time to get their thoughts together.
8 But, no, I, we can do it now, we can do mistrial motion
9 now, new trial motion now. That is not a problem, I just
10 offer that.

11 MR. SHAFFER: I should be able to do it now, Your
12 Honor.

13 THE COURT: Okay. Alright, let's, can you bring,
14 let's just bring Mr. Bolt in and you can examine him and
15 then we will bring Mr. Easley in. Okay.

16 (Whereupon, Bailiff, Johnny Bolt entered the
17 courtroom.)

18 THE COURT: Mr. Bolt, I need to have you sworn in and
19 just put something on the record concerning your
20 communications with us back in-chambers.

21 JOHNNY BOLT, being
22 first duly sworn, testified as follows:

23 THE COURT: And I am going to allow, he is going to
24 conduct just some limited questions, so I am going to
25 allow Mr. Shaffer to do that.

EXAMINATION BY MR. SHAFFER

1
2 By Mr. Shaffer:

3 Q Mr. Bolt, during your time as a Bailiff working on
4 this case you said, am I correct in saying that you had
5 some communication with jurors?

6 A Not really communication, just other than the fact
7 that when we went on break and outside there was concern
8 that they just asked me about, well they didn't really ask
9 me, just kind of came out, one individual kind of brought
10 up something that was involved, why did we have so many,
11 because I could sense there was some fear amongst them,
12 you know, because, and anyway I told them they were for
13 protection, for the Judge, the victims, for the jurors and
14 they didn't have anything to worry about. But they had
15 some, for some reason they had a lot of concerns as far as
16 fear was concerned. And that is when, because I, I had
17 one girl, one juror had asked me, says I want to ask you
18 something. I said, as long as it has nothing to do
19 concerning the trial. Because I have been doing this long
20 enough to know that I am not suppose to communicate about
21 nothing about what the trial or what, you know, goes on
22 and everything. So basically, fear of some things that
23 was noticed in the courtroom as far as some pointing to
24 the jurors going up and down the hall.

25 Q What do you mean by pointing at jurors going up and

1 down the hall?

2 A Well, one of them, it wasn't me but one of the other
3 Bailiffs had told me that one of the jurors had, not the
4 jury, one of the Defendant's member would point at them
5 going, you know, going up and down the hall. Said, you
6 know, like that, you know.

7 Q The Defendant's family member?

8 A Yes.

9 Q Do you have any details of which juror this was?

10 A No sir, I don't. Because I am used to pretty much
11 standing here. And then, of course, they see some things
12 that is going on in the courtroom as far as, you know,
13 like they had to take, I think on two different occasions,
14 had to take a family member, you know, escort them out of
15 the courtroom, I think making some kind of hand motions or
16 some kind of something which I didn't even see. I had to
17 ask later what was going on. Somebody raised their hand
18 so they took them out.

19 Q Did any, at any point during their deliberations did
20 they ever mention to you that they may be deadlocked?

21 A No, no. But they just, the Foreman did say, what
22 happens if we can't reach a, reach a, you know, that, we
23 can't reach any verdict. And I said, well, the Judge will
24 give you some details on that if something happens, that
25 you will need to write him a note and I will have to take

1 it to him.

2 Q Okay. Did you ever tell them anything about an Allen
3 Charge?

4 A Well, I was familiar and I said, well, he will give
5 an Allen charge, you know, because I have been doing a
6 lot, I have seen this and I just mentioned, you know, that
7 is usually the procedure that they do. And I said, yeah,
8 he would probably give you an Allen charge. I said, well,
9 he will just give you a charge and probably want to see
10 if, see if you can stay later, something or another, of
11 that nature.

12 Q Okay. Specifically related to the Allen charge, do
13 you recall the exact words that you said to the juror?

14 A I just mentioned name, Allen charge, and that, that
15 he may give them an Allen charge if they need.

16 Q And you told them they may have to stay later?

17 A I said once we give them the Allen charge, it is
18 based on what he told them.

19 Q Okay. And that they would have to go back and stay
20 later and deliberate?

21 A I didn't, I don't recall saying that.

22 Q What did you say specifically, because you just said
23 something about, if they gave you, you told them that the
24 Judge would probably give them an Allen charge?

25 A I mentioned the Allen charge, I did know what that

1 was. I said an Allen charge, he may give you an Allen
2 charge, you may have to, well I did say, he may ask you to
3 stay and stay later. I think that is what I said.

4 Q No further questions.

5 THE COURT: Okay. All right, Mr. Bolt, if you will
6 go on out and ask Mr. Easley to come in, please.

7 (Whereupon, Mr. Bolt exited the courtroom.)

8 (Whereupon, Bailiff, Mike Easley entered the
9 courtroom.)

10 THE COURT: Mr. Easley, I just need to have you sworn
11 in and Mr. Shaffer is going to ask you some questions.

12 MIKE EASLEY, being
13 first duly sworn, testified as follows:

14 EXAMINATION BY MR. SHAFFER

15 By Mr. Shaffer:

16 Q It is Mr. Easley, correct?

17 A Yes.

18 Q Mr. Easley, did you have any communication with any
19 juror about this case?

20 A About the case, no sir.

21 Q Okay. Did you have any communication with any of the
22 jurors about my client's family?

23 A There were questions asked to me by the jury.

24 Q What did they ask you?

25 A They would come to me, when they were coming in in

1 the mornings, one of them said that she felt uncomfortable
2 in the hallway, that the Green Family had been walking in
3 front of her and they stopped and turned around and
4 pointed at her. I had jurors this week ask where the
5 family was, are we going to be alright when we leave the
6 building. Other than that that is the gist of everything.

7 Q Did you, did you communicate in any way back with
8 them about the Green Family?

9 A Just that they would, everything would be alright
10 because we would make sure that there were no problems.

11 Q Okay. Did you have any communication or do you have
12 any knowledge about whether or not the jury was
13 deadlocked?

14 A No, I could not know what their--

15 Q Did anyone ever tell you anything about an Allen
16 charge coming from the jury?

17 A Coming from the jury, no.

18 Q Okay. What about coming from Mr. Bolt, what did Mr.
19 Bolt tell you about the Allen charge?

20 A Mr. Bolt never said anything to me personally about
21 the Allen charge. I know what it is and I know the
22 purpose of it.

23 Q Okay. And did Mr. Bolt tell you anything about being
24 deadlocked?

25 A No.

1 Q The jurors being deadlocked?

2 A No.

3 Q No further questions.

4 THE COURT: Thank you, Mr. Easley.

5 (Whereupon, Mr. Easley exited the courtroom.)

6 MR. MOWRY: Quite frankly, Your Honor, I think, as
7 far as Mr. Easley is concerned, that is exactly what the
8 Bailiffs are here for. They are here to receive jury
9 concerns and deal with those.

10 THE COURT: I understand. Let's go ahead and, let's
11 cut the jury loose, let me bring them in, thank them for
12 their service and going to cut them loose and then we will
13 take up your mistrial motion and then if you want to renew
14 your new trial motion with everybody back in we can do
15 that. Because I image your new trial motion is just going
16 to be raising issues that you have already raised anyway.

17 MR. SHAFFER: Yes, Your Honor.

18 MR. MOWRY: Do you want the family in here for this,
19 Your Honor.

20 THE COURT: Let's go ahead and leave them out so we
21 don't go back and forth.

22 MR. MOWRY: Alright.

23 (Whereupon, the jury came into open court at
24 approximately 7:11 p.m.)

25 THE COURT: In about two minutes, ladies and

1 gentlemen, I am going to cut you loose, how about that, is
2 that good news. Let me just tell you a couple of things.
3 First of all, the verdict that you reach in this case
4 matters, doesn't mean anything to me, doesn't matter
5 whether you find somebody guilty, it doesn't matter if you
6 find somebody not guilty. What matters to me is that you
7 perform your jury duty conscientiously, that you take it
8 seriously, that you work hard and that you follow all of
9 my instructions and you have done that. And that is what
10 is important to me. As I told you early on this week and
11 I think maybe one of the lawyers eluded to it, how high a
12 responsibility it is to serve on a jury. And we take it
13 very seriously and I believe you have taken it very
14 seriously as well. And so I appreciate that. It is a
15 tough job, I have never personally served on a jury,
16 naturally I won't ever serve on a jury. But I know that
17 it is tough just being a part of the judicial process in
18 the roll that I am. But even though it has been tough and
19 it has been hard and it has been long hours and now it is
20 7:15 on a Friday night, I hope that you can say that you
21 have experienced something, learned something that you
22 didn't know before. And that even though it is extremely
23 difficult, very hard to find someone guilty of serious
24 criminal charges, I hope that you can still say that it
25 has been a good experience for you in some respect, I am

1 not saying everything would be a good experience but at
2 least in some respects. And that maybe some time down the
3 road you would not be adverse to serving on a jury again,
4 whether it is in the criminal arena or whether it is in
5 the civil arena. I am going to Greenwood next week and
6 try a civil case. So, I thank you, I would like to, as
7 you are exiting, I like to shake the hands of my jury.
8 Madam Forelady, you need to hang around for just a minute
9 because you have to sign the back of both of the
10 indictments. So if you will just kind of hang, I tell you
11 what, if you would go to the, come around and get with Ms.
12 Lancaster. When you exit, just hang around here because
13 the Clerk has your checks. Don't make big plans for the
14 check. We will be engaging in the sentencing phase of
15 this trial in just a little bit. If you would like to
16 stay around for that you are more than welcome to, you
17 certainly don't have to. You are more than welcome to.
18 If you do they will assist you in coming back around and
19 sitting in the very back of the courtroom, just let the
20 deputies know that and they can assist you with that.
21 Okay. So, just exit and hang around so the Clerk can hand
22 you your checks.

23 (Whereupon, the jury was excused from open court at
24 approximately 7:15 p.m.)

25 THE COURT: We still need to keep the courtroom clear

1 and let's go ahead and do the mistrial motion and then we
2 can maybe take a short little break and finish up
3 everything else.

4 MR. SHAFFER: Your Honor, obviously in-chambers,
5 before the jury came back, we were informed about
6 essentially Mr. Bolt's communication with the jury, the
7 jurors or a juror, I am not sure how many it was. Your
8 Honor, I would, I guess I moved in-chambers for a mistrial
9 based off of that. Your Honor, I think that he is
10 entitled to, yeah, he is sufficiently entitled to a trial
11 by a jury that is free of improper influences. I cite to
12 a case called Holmes versus United States which is a
13 Fourth Circuit case from 1960. It is 284, F.2d, 716. And
14 it is a case involving, you know, similar facts, because
15 it is a little bit different issue. It is whether or not,
16 basically a court person, someone in the court informed
17 the jurors of where someone was being housed at, that they
18 were being housed in pretrial detention somewhere. I very
19 quickly read it, I haven't read the entire thing but
20 essentially the Fourth Circuit, that that was, that was a
21 Constitutional violation. There is some South Carolina
22 cases that address this issue mainly dealing with things
23 about asking a question. I think that Mr. Bolt's
24 questions, I guess his response to their question, you
25 know, what happens if we can't reach a verdict. Well, the

) IN THE COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
)

Indictment Nos. 2022GS1500592 – 00595

CERTIFICATE OF SERVICE

Richard Alexander Murdaugh,
Defendant.

Served: Creighton Waters, Esquire
Office of The Attorney General
Rembert C. Dennis Building
Post Office Box 11549
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cwaters@scag.gov

s/Richard A. Harpootlian
Richard A. Harpootlian

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT I

(Prehearing Transcript)

State of South Carolina) In the Court of General Sessions
County of Colleton) Fourteenth Judicial Circuit
2022-GS-15-0592
2022-GS-15-0593
2022-GS-15-0594
2022-GS-15-0595

The State of South Carolina,)
vs.) Transcript of Record
Richard Alexander Murdaugh.)
_____)

January 16, 2024
Columbia, South Carolina

B E F O R E:

The Honorable Jean H. Toal, Judge

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

Alan M. Wilson, Attorney General
Donald J. Zelenka, Deputy Attorney General
Samuel Creighton Waters, Senior Assistant Deputy AG
Johnny E. James, Assistant Attorney General
John P. Meadors, Assistant Attorney General
Attorneys for the State

Richard A. Harpootlian, Esquire
James M. Griffin, Esquire
Phillip D. Barber, Esquire
Attorneys for the Defendant

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>Ev.</u>

No exhibits introduced

1 THE COURT: This is a prehearing procedure in the
2 matter of State against Richard Alexander Murdaugh. It's
3 case numbers 2022-GS-15-00592 through 00595. Defendant
4 Murdaugh was indicted for the murder of his wife, Margaret
5 Brandstetter Murdaugh, and his son Paul Bennett Murdaugh,
6 and related weapons charges. His trial began on January
7 23, 2023. The presiding judge was Clifton Newman. After
8 six weeks of trial, on the evening of March the 2nd of
9 2023, the jury returned a verdict of guilty on all four
10 indictments, on which the defendant was sentenced on March
11 2023 to two consecutive terms of life imprisonment.

12 Notice of appeals of his convictions and sentences
13 were filed by defendant Murdaugh's attorneys on March 9,
14 2023, with the South Carolina Court of Appeals. The
15 transcript in this very lengthy trial took several months
16 to produce, even in draft form. Before the attorneys
17 received the final transcript, on September the 5, 2023
18 defendant filed with the Court of Appeals a motion to
19 suspend his appeal and for leave to file a motion for a new
20 trial with accompanying affidavits and transcript excerpts.
21 After further defense and state filings, on October 17,
22 2023, the Court of Appeals granted appellant Murdaugh's
23 motion to suspend the appeal and to remand this case to the
24 circuit court to allow defendant Murdaugh to file a motion
25 for a new trial.

1 On October 17, 2023, defendant Murdaugh received the
2 final trial transcript and very shortly thereafter filed a
3 motion for new trial in the Colleton County Clerk of
4 Court's office. Subsequently, Judge Clifton Newman recused
5 himself from further proceedings in this matter.

6 On December 16, 2023 -- excuse me, on December 18,
7 2023, Chief Justice Donald W. Beatty signed an order
8 appointing or directing that the Honorable Jean Hoefer
9 Toal, retired Chief Justice of South Carolina, be assigned
10 exclusive jurisdiction for the limited purpose of presiding
11 over defendant's motion for a new trial. I promptly
12 contacted counsel in this case and set deadlines for
13 briefing and arguments of the new trial motions. The new
14 trial motions were set to be argued on January the 23rd --
15 30th and 31st of 2024. And after several rounds of
16 pretrial briefs having been submitted to me, I also set
17 today's date for a procedural prehearing.

18 Before I begin, may I say that we certainly welcome
19 members of the media, and I thank publicly attorney Jay
20 Bender for agreeing to be the voluntary media coordinator
21 for this matter, as he did for Judge Clifton Newman on the
22 trial of this matter.

23 Cell phones are normally not permitted at all in our
24 courtrooms, but the press have been allowed to bring in
25 certain cell phones and laptops and electronic devices

1 because of the nonjury nature of this portion of the
2 proceedings. But if any device rings or sounds to receive
3 a call or to receive an email or a message, that device
4 will be confiscated, and the owner will be asked to leave
5 the courtroom. So, please now, if you haven't already,
6 check your electronic devices and be sure that they will
7 not sound during the time that these proceedings take
8 place.

9 Major topics to be covered today have been addressed
10 by me and discussed with counsel in a short pretrial
11 conference in my chambers, and counsel may have certain
12 things that they will put upon the record as we proceed
13 through these topics that deal with what should be covered.

14 The first topic is, is an evidentiary hearing
15 necessary at all. The State took the position the answer
16 to that was no. Obviously, the defendant not. I have set
17 an evidentiary hearing because I felt like we had to have
18 some brackets on that time that we'll spend on this matter,
19 but I have made no conclusive decisions beyond that on
20 matters affecting the arguments the State makes about the
21 procedural posture of this matter.

22 The next topic would be the burden of proof. Who has
23 the burden of proof in this matter, and what must be shown
24 to meet that burden of proof, and what must then be shown
25 to contest what has been shown and proved?

1 The third topic is procedural defects, most
2 specifically a contention by the State that this motion is
3 untimely because of what was known before a verdict was
4 rendered, accepted, and the jury polled.

5 And finally, we need to discuss witnesses: juror
6 witnesses, the clerk of court of Colleton County, Ms. Hill,
7 and other witnesses, and exhibits.

8 I note that at least one attorney in the room is an
9 attorney for some of the jurors, and other jurors may have
10 other attorneys. When I get to the portion of this
11 discussion when we talk about specific witnesses, and if I
12 am asked to hear from attorneys for the witnesses, I will
13 at least consider that request. I don't know where we will
14 be at that time in terms of what has been decided, but I
15 will at least inquire about that.

16 To that end, if you have not already, during the first
17 break be certain that all of you, the lawyers participating
18 at counsel table and any other lawyers that feel they may
19 have some interest in the proceedings that would warrant
20 comment by them, please give your cards or information
21 about your contacts to our court reporter, Ms. Harris.

22 With that, Mr. Harpootlian, you are the moving party.
23 You may proceed.

24 MR. HARPOOTLIAN: If it please the Court, Your Honor,
25 you raised -- I assume you want to go in the order in which

1 you just ---

2 THE COURT: I would.

3 MR. HARPOOTLIAN: Okay. You raised a number of legal
4 issues, from whether we've waived -- I forget the order
5 that you just took them, but Mr. Griffin is going to
6 address those *in seriatim* based on what you said just a
7 moment ago. As to the witnesses and the jurors, I will be
8 handling that portion of the argument today.

9 THE COURT: Very good.

10 Mr. Griffin, we'll hear from you now.

11 MR. GRIFFIN: Yes. Thank you, Your Honor. The, the
12 first issue that you've asked us to address is, is an
13 evidentiary hearing necessary, and the answer to that
14 question is very straightforward, is yes. Under, under
15 established case law and the Supreme Court, the Fourth
16 Circuit, and the South Carolina Supreme Court under *Remmer*,
17 a *Remmer* hearing is absolutely necessary where there has
18 been credible evidence presented that there's been an
19 improper third-party contact with the jury prior to their
20 deliberations that, that, frankly, whether it goes to the
21 merits or not, a *Remmer* hearing is absolutely necessary.
22 And, and, and, we believe that the Court of Appeals
23 decision in this case contemplated a *Remmer* hearing.

24 In a *Remmer* hearing, evidence is presented as to, to
25 what outside influences, if any, were brought to bear upon

1 the jury. We have in our motion for a new trial submitted
2 affidavits of one deliberating juror, one alternate --
3 excuse me -- and then a -- and then another affidavit of a
4 witness to an interview of an alternate wherein all three
5 statements are consistent and, and -- in that they heard
6 Ms. Hill, the clerk of court, prior to deliberations and,
7 frankly, before the defense put on their case, Ms. Hill
8 instructed do not be fooled by the defense. That's what
9 the sworn statements say. And secondly, before Mr.
10 Murdaugh took the stand, Ms. Hill advised one deliberating
11 juror and two alternates at least watch his demeanor, which
12 is an indication of, you know, he's going to lie.

13 And so then the question becomes factually did those
14 contacts happen. And, and then, you know, we proceed from
15 there as to what the burden of proof is after that. But
16 the threshold, are we entitled to evidentiary hearing? The
17 law is crystal, Your Honor.

18 THE COURT: Thank you, sir.

19 Mr. Waters for the State.

20 MR. WATERS: Thank you, Your Honor. May it please the
21 Court? Your Honor, obviously you've addressed the issue of
22 whether an evidentiary hearing is necessary. The State
23 certainly understands that. It is incumbent upon us,
24 though, based on the law to preserve our arguments as to
25 procedural bar, and those are twofold.

1 The first one, of course, is that a motion for a new
2 trial must be filed within ten days of the verdict unless
3 there's after-discovered evidence. And I think an initial
4 inquiry that needs to be determined is when the defense
5 first learned of these particular allegations. In
6 conversations with the defense -- and they said they were
7 going to give me an answer -- that they may have had
8 conversations with Juror 785 prior to her being
9 represented, which was only a couple of days after trial.
10 So, if that is the case and they were aware of these
11 allegations, then we would want to argue to Your Honor and
12 preserve the issue that this is not after-discovered
13 evidence, and that there's a procedural bar in that regard.

14 Secondly, we made the argument that the affidavits on
15 their face, the only deliberating juror indicated -- and
16 that's 630 -- in that affidavit only said that she voted
17 guilty. She had questions but voted guilty because she
18 felt pressured by other jurors. And, of course, the law is
19 crystal clear in multiple cases that that's sort of
20 internal debate. It's actually in Rule 606(b) that that's
21 not any sort of misconduct or anything that is an
22 appropriate venue or mechanism to attack the verdict.

23 So, for that reason we've argued that their showing in
24 their motion for a new trial is insufficient based on the
25 case law for an evidentiary hearing because there is on its

1 face no sufficient allegation of prejudice. That being
2 said, of course, we fully understand and expect the
3 evidentiary hearing will go forward, and we'll be happy to
4 address burden of proof after the defense makes their
5 arguments.

6 THE COURT: Very good.

7 With respect to -- well, Mr. Griffin, anything in
8 reply?

9 MR. GRIFFIN: Your Honor, it does not appear that the
10 State takes a position contrary that a *Remmer* hearing is
11 required. They're arguing that we have waived the right to
12 that hearing. There's no evidence in the record of that, I
13 can assure the court. We did not know of, of this
14 information within ten days after the trial, and, and when
15 we learned of it, we promptly acted.

16 MR. WATERS: Well, in conversations with Mr.
17 Harpootlian and Mr. Griffin, they were going to actually
18 look into that and look at their paralegal's notes. So, I
19 fully rely on, trust the defense to give me a fair answer
20 to that question. And then again if there's an issue to be
21 raised, we would raise that. We're not conceding anything.
22 We just wanted to preserve our issues.

23 THE COURT: I don't think we need to go back and forth
24 many times about this. I think I understand your position.
25 Here is my decision on the matter.

1 First of all, this is not -- I am not conducting a
2 *Remmer* hearing. *Remmer* is a 1954 decision of the United
3 States Supreme Court that deals with question of influence
4 of the jury and a motion for a new trial on the basis of
5 after-discovered evidence of that influence. I rely on the
6 South Carolina decision of our Supreme Court authored by
7 Justice Kittredge, *State v. Green*, and the *Green* decision
8 specifically says that *Remmer* is not the guidance that
9 South Carolina trial judges should look to in conducting
10 hearings on after-discovered evidence.

11 Now, that says nothing about what the burden of proof
12 should be, and I don't intend to say anything thereby. But
13 I do intend tell to you right away that I will be relying
14 on South Carolina's jurisprudence and South Carolina's
15 jurisprudence specifically on what must be proved in a
16 hearing of this nature and who bears the burden of that
17 proof.

18 All right, and that leads me to the very next topic
19 that we will now take up, which is the burden of proof.

20 Mr. Griffin.

21 MR. GRIFFIN: Yes, Your Honor. The -- as, as we cited
22 in, in our papers, we believe that the controlling case in
23 this instance, based on discovered conduct as alleged, and
24 that is conduct of court official -- here the clerk of
25 court having communication with the jury about the

1 substance or the merits of the case -- that the standard to
2 be applied is, is not *Green* because *Green*, Justice
3 Kittredge says that the contact by the bailiff was about a
4 procedural issue, not about the merits of the case. Here
5 we're dealing specifically with the merits of the case and
6 the -- and the Court of Appeals decision in *State v.*
7 *Cameron* we believe is the controlling standard.

8 And in *State v. Cameron* -- and that was decided in
9 1993, and, and the Court says in citing *Holmes v. United*
10 *States*, which is a Fourth Circuit opinion, says:

11 In this case, there was a private communication
12 of a court official to members of the jury, an
13 occurrence which cannot be tolerated if the
14 sanctity of the jury system is to be maintained.
15 When there has been such communication, a new
16 trial must be granted unless it clearly appears
17 the subject matter of the communication was
18 harmless and could not have affected the verdict.

19 Now, now, we strongly believe that is the standard, is
20 the question was the subject matter of the communication
21 harmless and that it could not have affected the verdict.
22 And, and we are -- that's our position on the standard.

23 Your Honor, if, if, if Your Honor looks to a different
24 standard, we, we, we believe that *State v. Green*, the
25 measure of *State v. Green*, you can't look just at Justice

1 Kittredge's opinion. You to look -- because, because he
2 complimented the Court of Appeals decision. And the Court
3 of Appeals decision absolutely applied the *Remmer* standard
4 of the burden of production is on the defendant, but when
5 the defendant produces evidence of a substantive
6 communication to the jury by any third party -- that's,
7 that's what *Remmer* is, by any third party -- that, that
8 then there is a presumption of bias and that the State then
9 has to overcome that presumption, produce strong, clear and
10 convincing evidence that it was harmless. And, and, and
11 that was the standard that the Court of Appeals applied in
12 the *State v. Green*. And in *State v. Green* the Court of
13 Appeals says that this is the standard of the Fourth
14 Circuit, and we follow the Fourth Circuit law in this area.

15 Now, Justice Kittredge says that the communication by
16 the bailiff, which essentially said if, if you're
17 deadlocked, which they never were and never became
18 deadlocked, then the judge may ask you to stay longer. I
19 mean, that was the communication by the bailiff in *Green*,
20 and Justice Kittredge said that did not go to the merits of
21 the case. Justice Kittredge didn't throw out the *Remmer*
22 presumption standard in *State v. Green*, Your Honor.

23 And it's important that the Court of Appeals decision,
24 looking to the Fourth Circuit because, as Your Honor knows,
25 this case -- and, and I would encourage the court to look

1 at the *Holmes* decision out the Fourth Circuit which we cite
2 which applies to *Remmer*. It applied to *Remmer* in a *habeas*
3 *corpus* case when they said *Remmer* is the clearly
4 established law in the Fourth Circuit, and it vacated a
5 death penalty conviction out of North Carolina because the
6 North Carolina courts did not follow *Remmer*. And, and so
7 the Court of Appeals decision in *Green* says we look to
8 *Remmer*. Justice Kittredge says, you know, we're not going
9 to apply the *Remmer* decision here because it didn't go to
10 the merits.

11 What we have in this case and what we have, you know,
12 presented through proffer on the affidavits, something that
13 goes to the heart of the merits. It's the defense. It's
14 the credibility of the defendant's testimony. And so we,
15 we do have the burden of production, but we do believe
16 that, that the standard in *Cameron* is we just have to show
17 that the subject matter of the communication, that it was
18 material to the case, and that then the burden shifts to
19 the defendant to prove that it was harmless -- excuse me,
20 the burden shifts to the State to prove it was harmless.

21 THE COURT: Thank you, sir.

22 MR. GRIFFIN: That -- that's what we believe the
23 standard is.

24 THE COURT: Mr. Waters.

25 MR. WATERS: Your Honor, as you -- and I'm going to

1 walk through some of the cases in South Carolina to -- that
2 address this issue. But as Your Honor is aware, of course,
3 when we deal with these issues, we have two types. We have
4 internal misconduct, and our courts have been reluctant --
5 Rule 606 says this as well -- to delve into that unless
6 there are concerns of fundamental fairness like racism and
7 things like that. And then there's external, allegations
8 of external influence and that sort of thing, and that's
9 what we're dealing with here today.

10 And to quote *State v. Grovenstein*, which is a 1999
11 case of the State Supreme Court, it cites *Aldret* and *Kelly*
12 and says:

13 We have consistently held that defendant must
14 prove prejudice in these sorts of claims.

15 And if we walk through all of the case law, our court
16 has been very careful and as much said so in *Aldret*, which
17 was an internal case, to sync the analysis and the -- and
18 the standards between those two, and consistently held that
19 the defendant has to show prejudice. It's their burden to
20 do so.

21 In *Blake*, 1992, the Court held:

22 I don't presume prejudice, and the test of the
23 courts was whether or not the verdict was solely
24 the product of honest deliberation or whether it
25 was the product of outside influence.

1 We go over to *State v. Kelly*. The Court -- of course
2 Your Honor concurred with Chief Justice Finney's dissent in
3 that case. But in that case, there was a pamphlet in the
4 grand jury room. Clearly an external influence was alleged
5 there, and ultimately in that case the court held that the
6 defendant failed to show prejudice from that particular
7 external influence.

8 In *State v. Grovenstein*, in this instance it was
9 clearly external. There was an alternate who was present
10 in the jury room and even took a preliminary vote with the
11 jurors. So, clearly an external influence, far more than
12 is even alleged in this case. That juror was removed, a
13 curative instruction was given, but ultimately the Court
14 was very clear: That we have consistently held the
15 defendant must prove prejudice. Again, the burden being on
16 the defendant.

17 In *Bryant*, this was a capital case, one that I argued
18 from way back when, and in that instance, there was a
19 police investigation, background investigation into
20 death-qualified jurors in a capital case. Clearly
21 external. The trial court conducted an inquiry with
22 questions submitted by the parties as well, and ultimately
23 noted that it was the defendant's burden to prove actual
24 bias on the part of the jury.

25 In *State v. Pittman*, another case that I argued before

1 Your Honor, in that particular case there was a juror who
2 had a conversation with his wife and with a bartender, and
3 ultimately again the Court held that the defendant failed
4 to meet the burden of prejudice because the wife's comment
5 was the defendant was not guilty, and the comment to the
6 bartender took place after deliberations had begun.

7 And then of course in *Green* in 2020, Your Honor just
8 commented on that, and the Court clearly held that the
9 *Remmer* presumption of prejudice doesn't apply here. And
10 then, of course, went on to note that the defendant bears
11 the burden of proving, proving prejudice.

12 And *Cameron* is a case that they rely on a lot, and I
13 would say this about *Cameron*. And then *Cameron*, of course,
14 goes on to say that the mere fact of any official
15 communication does not mean necessarily that the jury was
16 prejudiced and went on again to do a prejudice analysis and
17 a harmless error analysis.

18 *Covington* is a Court of Appeals case from 2000. In
19 this particular case, there were jurors who supposedly knew
20 the defendant and knew some external information about
21 whether or not he had previous difficulties with his wife.
22 That was clearly external information. Again, the Court
23 held that the defendant failed to show prejudice.

24 So, the case law in South Carolina, both from our
25 state Supreme Court as well as our state Court of Appeals,

1 it's clear. It's in sync. It's uniform that it's the
2 defendant's burden to show prejudice, and that's, of
3 course, only after there's a determination that any sort of
4 extraneous influence occurred. And that would be the
5 State's position, that it is the defendant's burden.

6 And again we can address at the appropriate time what
7 the State's position is as to the order in which the
8 evidentiary hearing should go.

9 THE COURT: Thank you, sir.

10 Mr. Griffin, any reply?

11 MR. GRIFFIN: Yes, Your Honor. There is a tremendous
12 difference in the law as to how the court analyzes juror
13 misconduct as in *Kelly*, where the juror reaches out to her
14 pastor, gets a pamphlet, brings it into the jury room, and,
15 and that was found during the course of the trial.

16 The trial judge removed Juror O, who had gotten a
17 pamphlet, voir dired every, every juror to ask what affect
18 that had and could they put that out of their mind and
19 deliberate. So, that happened during the middle of the
20 trial, but it was juror misconduct. All the cases that he
21 cited, the State relies upon, are juror misconduct cases,
22 not, not unauthorized third-party communication that goes
23 to the heart of the Sixth Amendment right by defendant to
24 confront his accusers, to, to cross-examine witnesses who
25 present evidence. And, and when a third party makes an

1 improper contact with the deliberating jury before they
2 deliberate, that falls at the heart of the Sixth Amendment,
3 which is a different, different animal altogether than,
4 than where a juror engages in misconduct. And that's where
5 you get to *Cameron*. That's where you get to *Green*, which,
6 which *Green* says it was a procedural communication, not,
7 not a merits communication.

8 And, and, Your Honor, in *Bryant* -- well, I would note
9 Your Honor dissented in *Kelly*, but in, in *Bryant*, no jurors
10 were interviewed, as best we can tell by the -- by the
11 record. But in *Bryant*, it was a death penalty case. Law
12 enforcement -- I believe it was Horry County -- questioning
13 the jurors' relatives and friends and trying get their
14 belief as to whether they believed in the death penalty.
15 Apparently that -- some of that kind of leaked back to one
16 juror or maybe -- but, but there's -- there was no record
17 saying that jurors were prejudiced by that. But the Court
18 said that behavior cannot stand, and we find prejudice
19 based on conduct, not on the jurors' testimony. And, and
20 they didn't use the word presumption, but they found
21 prejudice.

22 And, and I don't want to get caught up in this issue
23 of, of do we have to establish prejudice. I think
24 prejudice is established, but the question -- it has to be
25 established, but the question is, is it presumed under the

1 circumstances. And if it's presumed under the
2 circumstances, what does the State have to rebut? And, and
3 so, you know, prejudice is a touchstone, but the question
4 is evidentiary presumption. Here where there is a
5 third-party communication that goes to the merits of the
6 case, the law is crystal clear that there is a presumption
7 of prejudice, and the State has the burden of proving it's
8 harmless beyond a doubt.

9 THE COURT: Thank you, sir.

10 MR. GRIFFIN: Thank you.

11 THE COURT: All right, Mr. Waters, you know, I'm not
12 going to go back and forth a million times, but if you want
13 to have a short comment in addition.

14 MR. WATERS: Very short, Your Honor. He said that
15 these were not external influence cases, and every one of
16 them that I listed was. Your Honor, *Blake* was bailiff.
17 *Kelly* a pamphlet. Again, it was an external piece of
18 information coming in. *Grovenstein*, it was an alternate;
19 again, that's an external influence. *Bryant* was police
20 investigation. *Pittman* was a bartender and a wife's
21 comment. *Green* was a bailiff, and so -- and *Covington* was,
22 you know, evidence that was not submitted at trial but the
23 jurors were aware of. So, clearly all of those were
24 external influence cases, Your Honor.

25 THE COURT: All right. I do not regard *State v.*

1 *Cameron* as the guidance that needs to be used by me in
2 making a determination about this case. It's a Court of
3 Appeals case. Since that case in 1993, there have been
4 several cases, including *Green*, *Aldret*, and others, that
5 very specifically talk about this issue of what the burden
6 is on a motion for a new trial on the basis of
7 after-discovered evidence that involves tampering or
8 alleged tampering of the jury.

9 All those cases say that prejudice must be proved, not
10 presumed, and it may very well be that that is what's going
11 to be shown. But for purposes of what the defendant must
12 show as the case goes forward to an evidentiary hearing,
13 the presumption simply by the contact -- which we don't
14 have any sworn evidence about except in the area of one
15 juror at this time -- presumption is not the way to examine
16 this issue, but rather specific evidence about what was
17 said, when it was said, and how it was perceived by the
18 juror is what I believe is required by *State v. Green* and
19 other cases. And, therefore, that is the approach I will
20 take.

21 All right, the next area of inquiry is the procedural
22 argument of the State that this matter was untimely made.

23 Mr. Waters.

24 MR. WATERS: Yes, ma'am, Your Honor, and again we have
25 raised the issue, as we talked about earlier, that we

1 believe that there is at least an inquiry as to a
2 procedural bar that if the defense was aware of these
3 allegations during the ten days, then it is not
4 after-discovered evidence and the motion is untimely.

5 And additionally we also, as I previously expressed,
6 would raise the issue that affidavits on their face are
7 insufficient to put in play at an evidentiary hearings, and
8 there are multiple cases that have -- in the State that
9 held -- I think *Yarborough* is one of those -- that held
10 that where those -- that showing was not made, that the
11 trial court properly denied an evidentiary hearing. So, we
12 would just preserve those issues, understanding the Court's
13 plan, procedure that you previously expressed.

14 THE COURT: All right. All right, Mr. Griffin or Mr.
15 Harpootlian, let me say, I will say to the defense -- I
16 mean, to the State that I believe that issue needs further
17 exploration. So, I am not prepared to rule that this
18 matter is untimely in the least. We're going to have a
19 hearing on this matter at which time this issue will be
20 further explored. So, the State has preserved its
21 position, but you need not argue about that matter at this
22 time.

23 MR. HARPOOTLIAN: Thank you, Your Honor.

24 THE COURT: And now the matter that, to me, is the
25 heart and soul of what we're doing today is the witnesses,

1 the exhibits, and procedure needed with respect to the
2 witnesses. And the witnesses at least are the jurors and
3 the clerk of court, Ms. Hill. What I'd like each side to
4 explore with me is how those witnesses should be presented,
5 who should present them, and how they should be questioned,
6 and whether there are any brackets or limitations that
7 should be imposed on what these witnesses are asked. And I
8 will begin with the jurors, which is really the heart and
9 soul of the matter. Other witnesses are very secondary to
10 the first issue, which is the jurors themselves.

11 Mr. Harpootlian, you are the moving party, and you may
12 proceed.

13 MR. HARPOOTLIAN: Your Honor, we agree all twelve
14 jurors should testify. We -- I think both sides agree Your
15 Honor should question those jurors.

16 The only question is -- I mean, not the only question.
17 The first question would be as Your Honor questions these
18 jurors, would you -- would you -- in all the cases the
19 judge questions, would you want suggestions from us as to
20 what additional questions we have after they respond to
21 your questions, raise additional questions? That's number
22 one.

23 Number two, each one of these jurors except -- of the
24 original twelve, I think all have been interviewed. Maybe
25 two have not been interviewed by SLED and given statements,

1 recorded statements. The rest have all given recorded
2 statements, and then SLED prepared a memorandum of
3 interview. We have reviewed all these videos and the MOI,
4 and I can tell the court that the MOIs aren't consistent in
5 many instances with what was said on the video to the
6 extent that information was left out.

7 Now, if Your Honor is going to be very restrictive
8 and, and did the clerk communicate something to you and did
9 it affect your decision, I guess that's what we're hearing
10 from Your Honor when you're following *State v. Green*. If
11 you're going to say that, ask those questions, I mean,
12 there's some of these jurors who indicated they heard the
13 clerk say what the, the, the juror that gave the affidavit
14 for us say, and I think they're going to say it didn't
15 affect them, which is fine. If it affected that one juror,
16 we think that's enough, and that juror has obviously given
17 an affidavit to us.

18 The alternate which was excused and the -- he called
19 her the egg lady, but she was also excused: the alternate
20 because she wasn't needed, the egg lady because the judge
21 found that she had had contact with people and discussed
22 the case. They further indicated that the clerk said what
23 we say she said, and we believe they should be examined.
24 We'll be happy to do that, or the Court could do that.

25 So, there are witnesses, and then we have the clerk

1 herself. I talked to her lawyer this morning, who
2 indicated she has not made a decision as to whether or not
3 she will assert any constitutional right not to testify,
4 and obviously that could be on a question-by-question basis
5 maybe. I don't know. I mean, we're not ready to argue
6 what the standard is on the Fifth Amendment at this point.
7 But if she does testify, there are literally thousands of
8 emails we were furnished last week by Colleton County, some
9 information furnished by SLED this morning, and the
10 attorney general which might be utilized. I can't say
11 right now it would or wouldn't, depending on her answer, to
12 impeach, contradict. And so it's, it's -- I can't tell you
13 what exhibits it would be or we would do because I don't
14 know what her answers are going to be.

15 We believe we should be able to examine her as a
16 hostile witness. We, we should be able to call her as a
17 witness because the burden is on us, as Your Honor has just
18 enunciated.

19 Now, the only other thing I would say is this. Even
20 if Your Honor determines that a piece of evidence or a
21 question is not admissible for your consideration, for
22 purposes of the appellate record, we believe we ought to be
23 able to make a proffer. So, it may be that you allow --
24 Your Honor allows us to go forward and then in your
25 decision decide it's not relevant, in your decision decide

1 you didn't consider it or whatever, but stop and go is
2 going to elongate that hearing dramatically. And again,
3 since you're the finder of fact, you can decide not what a
4 jury is going to hear but what you, you -- it matters to
5 you.

6 So, we think the examination of the clerk should be
7 wide open, and we think that the exhibits we would use to
8 impeach her, we would attempt to keep it relevant to the
9 specific issues in this case.

10 I mean, her son has been -- for instance, her son has
11 been indicted for, for wiretapping. There seems to be some
12 inference, what we read in the paper -- we don't have any
13 specific knowledge -- that she was aware of that, and that
14 wiretapping was in relation to some ethics complaint about
15 her. That's not relevant; we're not going to ask her about
16 that. Now, we're continuing to examine whether or not
17 there is some connection there, and we're, we're
18 investigating that. But at this point, I will tell you
19 that's not where we're going.

20 Where we are going, by way of example, is we have been
21 furnished an email that she, she got on February 24th from
22 somebody which was a photo, a screenshot of a, a -- looks
23 like a posting on some sort of Facebook page where the
24 ex-husband of a juror -- not the egg lady -- alleges that
25 his ex-wife was talking about the case, and she was going

1 to vote guilty because she hates men.

2 Now, we, we know she got it. We know she got it on
3 February 24th, yet on the morning of February 27th she
4 tells in the -- in the chambers, the hearing we were all
5 present at, that she had seen a Facebook page posting by
6 egg lady's ex-husband alleging that she was talking about
7 the case. She didn't think he was guilty. That Facebook
8 page has never been produced, and then she produced a, a
9 Facebook posting she said by the egg lady's husband. Turns
10 out to be a guy I interviewed in Georgia apologizing for
11 what he had posted on Friday night which concerned his
12 wife's aunt meddling in their marriage. I think that's
13 fertile ground for cross-examination. Your Honor may
14 disagree with me, but I still would like to put those items
15 into evidence for the appellate record at the time.

16 The last thing I would say is this. In terms of Your
17 Honor questioning the jurors, we need instructions from you
18 as to whether you want -- when you finish with a juror, do
19 you want us to submit questions to you? Do you want -- I
20 doubt you're going to let us question them. How is that
21 process going to work, and will that be done someplace --
22 would be done in this courtroom? Will be done somewhere
23 else? And if the jurors will be questioned outside of this
24 courtroom, will there be a way for the public to hear what
25 they have to say?

1 Beg the court's indulgence.

2 (A PAUSE.)

3 MR. HARPOOTLIAN: Beg the court's indulgence.

4 (A PAUSE.)

5 MR. HARPOOTLIAN: And Mr. Griffin correctly points out
6 it's not just what they heard, may have heard from the
7 clerk, but did any of the other jurors -- for instance, egg
8 lady, we keep calling her, gave an affidavit indicating
9 Becky said things like don't be fooled. Watch the body
10 language. Watch, watch his body language as he testifies,
11 Mr. Murdaugh. Did she relate that to any other jurors?
12 It's not just what -- was it -- did it -- or did the
13 sitting juror or the alternate in the...

14 Beg the court's indulgence.

15 (A PAUSE.)

16 MR. HARPOOTLIAN: One other point. In the memorandum
17 of interview, now the clerk's private lawyer, Mr. Lewis,
18 objected to any videotaping or audio taping of the clerk
19 when she was interviewed. But in the memorandum of
20 interview, she -- that is the clerk -- indicated she had
21 conversations with the forelady outside the presence of the
22 rest of the jury about what was going on in the jury room.
23 Obviously, I would cross-examine her on that, but it may be
24 necessary if she testifies to things that are inconsistent
25 in that MOI for us to call the SLED agent that did the

1 interview to corroborate the MOI.

2 The MOI may be introduceable in and of itself as an
3 exception to hearsay rule, but I believe it would -- may be
4 necessary for us to call the SLED agent.

5 We're not going -- and, Your Honor, we're not --
6 you've indicated you're not going to want to know what --
7 any sort of summaries of those interviews by the jurors
8 when we talked back in chambers or necessarily the MOIs.
9 You want your own fact-finding with the jurors. To the
10 extent that they contradict those, we may put all of that
11 in the record for appellate purposes. And if you want,
12 want to see those before you have this hearing, we can
13 obviously put those -- we could put those in the record
14 today or have those available for you, both the MOIs and
15 the videos or -- we're, we're -- obviously, we're going to
16 do whatever you tell us to do, but we're looking for some
17 guidance as to if there's anything we can get you prior to
18 that evidentiary hearing concerning those memorandum of
19 interview by the SLED agents and the videotapes, whatever
20 you -- whatever you instruct us to do.

21 Beg the court's indulgence.

22 (A PAUSE.)

23 MR. HARPOOTLIAN: Your Honor, we mentioned and Mr.
24 Griffin reiterated to me just now, obviously you don't need
25 to tell us that -- this today because we're not going to be

1 doing the questioning, but there is the consideration of
2 606(b) and the, the incursion into deliberations. At some
3 point -- we don't need to know that today -- but at some
4 point prior to you questioning the jurors, we'd like you to
5 enunciate what your position is on that.

6 THE COURT: You're going to have to outline that a
7 little bit more for me. What part of 606(b) are you
8 discussing?

9 MR. HARPOOTLIAN: Well, it says:

10 Upon an inquiry into the validity of a verdict or
11 indictment, a juror may not testify as to any
12 matter or statement occurring during the course
13 of the jury's deliberations, or to the effect of
14 anything upon that, or any other juror's mind as
15 -- or emotions as to influence a juror to assent
16 to or dissent from the verdict.

17 THE COURT: All right, sir, and what are you saying
18 that imports for this proceeding?

19 MR. HARPOOTLIAN: Well, I mean, for instance, if we
20 show, if we prove to you that the clerk said do not be
21 fooled or, you know, watch, watch Murdaugh's testimony,
22 watch the body language, referring -- he was lying, he
23 would be lying, one of the issues is if, if the juror who
24 sat during deliberations who said that she -- that the
25 clerk said that, did she discuss that with any other

1 jurors? Did she infect the jury? Does this allow you to
2 do that?

3 THE COURT: Well, you certainly -- if you go to
4 606(b), it gives you some guidance about that. It says:

5 Upon inquiry into the validity of a verdict or
6 indictment, a juror may not testify as to any
7 matter or statement occurring during the course
8 of the jury's deliberations, or to the effect of
9 anything upon that, or any other juror's mind or
10 emotions influencing the juror to assent or
11 dissent from the verdict or indictment, or
12 concerning the juror's mental processes; except a
13 juror may testify on the question of whether
14 extraneous prejudicial information was improperly
15 brought to the juror's attention, or whether any
16 outside influence was improperly brought to bear
17 upon any juror. Nor may -- nor may a juror's
18 affidavit or evidence of any statement by the
19 juror concerning a matter about which juror will
20 be precluded from testifying be received for
21 these purposes.

22 I take that to give us the guidance we need about the
23 parameters of the questions.

24 MR. HARPOOTLIAN: But, but if -- again, the juror that
25 gave us the affidavit, would she be asked did you discuss

1 that during deliberations, did she do that?

2 THE COURT: That apparently is very questionable under
3 the terms of 606, and I intend to abide by that. The way
4 those questions have been asked in the many cases I have
5 reviewed is to ask the juror whether that's still their
6 verdict. If they're asked about improper contact and they
7 talk about improper contact, then the way to pursue it
8 beyond that for the judge is to ask about the impact on the
9 verdict, not on the deliberations themselves. That may be
10 a small slice of difference, but I think it's very
11 important to understand that no one, not myself or anyone
12 else, is going to be asking the jurors about the specifics
13 of their deliberation, and the rule is quite clear about
14 that.

15 MR. HARPOOTLIAN: Okay, and, and, and is it clear that
16 you will not be using the SLED interviews or MOIs to
17 attempt to impeach.

18 THE COURT: I told you when -- when that was brought
19 to my attention in our chambers conference this morning I
20 haven't made my mind up about that. I don't know what's in
21 those summaries or anything else, and we're going to have
22 to discuss that, but again I'm going to be doing the
23 questioning at this point, Mr. Harpootlian.

24 MR. HARPOOTLIAN: Yes. Yes, Your Honor.

25 THE COURT: And I am trying to perceive what you all

1 are asking, and I'm going to go to the State now and what
2 their reaction is to what you said.

3 MR. HARPOOTLIAN: Thank you, Your Honor.

4 THE COURT: Mr. Waters.

5 MR. WATERS: Thank you, Your Honor. May it please the
6 Court? Your Honor, again we would concur with what Your
7 Honor just said about Rule 606 and, of course, all the
8 cases that we've talked about, and the need to show
9 prejudice. And obviously when you're talking about
10 external influence, that prejudice would be an appropriate
11 subject to inquire into the jurors as whether or not there
12 was an impact on the verdict.

13 And we, of course, have suggested to Your Honor not
14 only based on the cases that, that should be judicially
15 conducted in a manner that protects the privacy of those
16 jurors and protects the privacy of their identities. These
17 jurors were drafted into service, and this inquiry, of
18 course, has to happen, but it needs to be conducted in a
19 manner that respects their privacy and should be, of
20 course, judicially conducted.

21 We have suggested those, those two questions. If we
22 look at the *Bryant* case, the *Bryant* case specifically talks
23 about the fact that, depending on how the examination goes,
24 there could be questions suggested by the parties. And
25 obviously I think we would need to cross that bridge if and

1 when that needs to be crossed. And that starts with the --
2 with the Court's inquiry to those jurors and only if
3 something arises that needs further inquiry could that be
4 addressed at that point. And that could be even a
5 discussion from counsel with the Court as to what
6 additional questions may be proper.

7 You know, when the State first became aware of these
8 allegations, the first thing that we did was ask SLED do an
9 independent investigation, and the goal was good, bad, or
10 ugly to get to the bottom of what, if anything, happened.
11 And the result of that is why we are still here today. And
12 that is that in speaking with the jurors that spoke to us,
13 that the balance of the evidence, as well as in talking to
14 the clerk's staff, was that there was no impact on any
15 verdict. There was nothing unprofessional or untoward that
16 happened that had any affect on the verdict. And so when
17 we did that inquiry and that is what the jurors said, that
18 is why we're here today, and that's what this hearing is
19 going to address.

20 The only juror that we have is the one who filed the
21 affidavit, that 630, and even she -- or that person said
22 that she, you know, eventually voted guilty because she
23 felt pressured by the other jurors. Did not even mention
24 any external impact. And so unless she'd going to change
25 her story, that is what was in her affidavit. So, the

1 balance of the evidence is the reason why we're here today
2 and, and why this hearing needs to take place.

3 Your Honor, as far as inquiry to those jurors, again
4 there could be a need that the parties would suggest
5 questions. And it could be, depending on how things go,
6 that the affidavits or maybe even the recordings, all of
7 which have been provided to the defense, full recordings of
8 those interviews of any potential witness in this case has
9 been provided to the defense, it could be that issues
10 could, could arise from either the State or the defense as
11 to impeachment. And we can address those issues as they
12 arise under the appropriate rule, 608, 613, and the like,
13 dealing with not only prior incon -- state -- inconsistent
14 statements but other evidence that would be properly
15 impeached.

16 Ultimately, I do need to address one thing as it -- as
17 it deals with all this, and that is the defense's
18 contention that somehow the clerk is a party opponent in
19 this particular case, and we believe that that is
20 incorrect. Obviously, there is a hearsay exception or a
21 non-hearsay determination in the evidentiary rules, I
22 believe in 801, that exclude statements of the party
23 opponent. But just because the clerk is an elected
24 official and of the State does not make them a party
25 opponent in the way that term is defined. A party opponent

1 is an active litigant before the case, and that is, I
2 think, a difference. So, we would certainly say that, that
3 hearsay rules would still be in effect as it relates to Ms.
4 Hill and any testimony that she may provide.

5 I know there's been some discussion about the order in
6 which the witnesses may be called and whether or not Ms.
7 Hill would be a hostile witness. And obviously that's
8 under Rule 611 and, I believe (c), which would allow
9 leading questions, you know, if a person is hostile. I
10 think, again, at this point I don't know that any showing
11 necessarily has been made, but I understand the defense may
12 raise that point. We may have some arguments at that time.
13 But I, I don't know that there's been such an
14 identification between Ms. Hill and the State that would
15 allow, A, her to be identified as a party. I mean, that's
16 far out of bounds, but also that she would be applicable --
17 to allow defense leading questions under 611(c).

18 Your Honor, in looking at the type of examination that
19 would need to happen here, and again the issue also was --
20 arose of the Fifth Amendment, and I know that the defense
21 would like to brief that issue. We're happy to respond.
22 We don't know exactly how that might arise in the course of
23 any examination. We need to cross that bridge again when
24 we get there. We would say, though, that the Fifth
25 Amendment is question specific, and so again it may be

1 something that this Court has to rule, as is in any sort of
2 evidentiary presentation, question by question based on any
3 objection by the party. So, it's kind of hard to say that
4 -- exactly what the blanket position would be until we
5 actually get to, to that determination.

6 Ultimately, the defense referred to some information
7 provided this morning. Actually, both sides exchanged last
8 night their communications with the clerk during the course
9 of the trial. So, both, both sides did that last night and
10 that there were a lot of communications with the defense as
11 well. So, again, and I just want to point that out in the
12 -- if there's any sort of allegation or, or insinuation
13 that the State's not providing information, we've been very
14 diligent about providing any and all information to the
15 defense. And if any additional information arises, we will
16 continue to do so. But both sides exchanged that last
17 night.

18 And, of course, there's been some reference in their
19 filings as to emails that were forwarded from the clerk to
20 me and to my paralegal, and they've actually even listed me
21 on the -- on the witness list. And, Your Honor, as we've
22 had a chance to peruse the defense communications with the
23 clerk, there is just as much communication and offers of
24 help. It was just a uniform, across-the-board
25 courteousness that's reflected from those. So, we think

1 that that's a non-issue, and we think that that should not
2 be something that arises during the course of this
3 evidentiary hearing, at least as it would require
4 communication from -- or testimony from attorneys.

5 Your Honor, ultimately as we look at the inquiry that
6 will need to be conducted, as the State had made clear, it
7 starts with the jurors and only if something arises in that
8 inquiry, further inquiry to those jurors may be necessary.
9 And that could be in discussion with the parties, as I've
10 stated before.

11 And then I know Your Honor has indicated that the
12 clerk should testify, and we certainly understand that.
13 The clerk filed an affidavit denying any of these
14 allegations, and so again as we address the clerk's
15 testimony, the State would have objection to some of the
16 information I believe the defense would propose to examine
17 her on. We believe that an inquiry should be limited to
18 what is appropriate and relevant impeachment but not should
19 be just a far-ranging fishing expedition or full, full
20 inquiry into a lot of subjects that have come up since the
21 trial that we believe are not relevant to any inquiry that
22 is before the court here now.

23 Obviously, Rules 404, 401, 402, and 403, as well as --
24 which, of course, address relevance and 403 objections.
25 404 addresses other crimes or wrongs or acts. Rule 606 --

1 or, excuse me, 608 which addresses, you know, inquiry into
2 other specific acts and impeachment, and Rule 613 which
3 talks about prior inconsistent statements, all those rules
4 potentially could come into play depending on the nature of
5 the testimony and the nature of the inquiry.

6 But there have been allegations since the trial about
7 the book, about this wiretapping case, about investigations
8 into alleged use of office for improper gain, but again all
9 those are subsequent to the trial. So, again, depending on
10 how the testimony goes, the State would raise appropriate
11 objections at that time to limit the inquiry to what is
12 appropriate for what is before the Court, and that is what
13 occurred during the trial. So, we would make those
14 particular evidentiary objections as things developed.

15 Ultimately, that would be the State's position. I
16 know that we're trying to put as much meat on the bones as
17 we can at this particular point in time. But I think the
18 reality is, is that the Court's inquiry to the jurors will
19 really determine the nature of the inquiry that needs to
20 proceed from there. And at that point, the State would,
21 you know, take the positions that I've outlined here today.

22 THE COURT: Any reply?

23 MR. HARPOOTLIAN: Please the court, Your Honor? 404,
24 it's somewhat ironic the State is quoting 404, Your Honor.
25 One of the exemptions to 404 -- I know this will be

1 surprising to Mr. Waters -- is motive, as if he'd never
2 heard that before. He told me this morning one of the
3 assistants that worked for Ms. Hill during this trial was
4 told by Ms. Hill during the trial that a guilty verdict
5 would be good for sales of the book. Motive: selling
6 books.

7 So, we believe we should be able to get into that; we
8 should be able to ask Ms. Hill about it. If she denies it,
9 to call that witness, that assistant, and have her testify
10 that she was told that. I mean, why would a clerk do what
11 we've alleged she did we think is important for Your Honor
12 in terms of credibility and context. That's number one.

13 Number two, Your Honor, I think we've all agreed.
14 You're going to ask the questions, whether we've agreed or
15 not, and we do agree with that. The question is going to
16 become as we go through that process how, if a juror says X
17 and they said in their interview Y or if they've said to us
18 Y or didn't include it in their original affidavit, and you
19 don't ask that question initially, how are you going to
20 handle -- or do you care how we suggest to you a further
21 question? Because, as Your Honor sees this morning, the
22 back and forth can go on for a while, and we certainly
23 don't want that to go on with a juror. So, we're going to
24 need some guidance on that. I'm not expecting that
25 guidance this morning.

1 But the last thing is we -- as these jurors are
2 examined, I need to understand a little bit about the
3 logistics. Are we going to do it in this courtroom? Are
4 we going to do it in another courtroom? Is the public
5 going to be able to hear the responses? Will there be an
6 audio feed if we do it somewhere else? Are you not -- are
7 you going to have cameras turned -- do it in this courtroom
8 and have cameras turned off? And we're obviously not to
9 refer to jurors by their names, even though three of these
10 jurors went on the *Today Show* and another went on ABC.
11 They were all in the courtroom when the judge had them
12 brought in at the end. They were in the courtroom, all
13 except for one of them, for the verdict. Cameras were
14 there then.

15 Again, I'm sensitive to their anonymity, but I don't
16 know that any of them have any real anonymity anymore.
17 Saying that, I think it's important not only for Your Honor
18 to hear their answers but the public to hear their answers.
19 Thank you.

20 THE COURT: All right, sir.

21 MR. HARPOOTLIAN: Thank you.

22 THE COURT: With respect to the jurors first as
23 witnesses, I will be doing the questioning of the jurors,
24 and I will notify the parties pretty promptly what I intend
25 to ask the jurors. The ambit of what I will be asking them

1 is informed by the question of whether improper contact was
2 made with them, and whether it affected their verdict.

3 I understand that you on the defense side have views
4 about what further should be asked of jurors on two levels.
5 One, as a predicate to what you want to do with the clerk
6 herself in examining her, and two, as a means of further
7 attacking the credibility of the clerk and her testimony.

8 I have not seen any of the SLED material or memoranda
9 concerning the State's summary of these interviews and so
10 forth. I will be open to receiving that if it's done
11 promptly because we've got a hearing coming up the 29th,
12 and I want there to be plenty of time to revise any current
13 ideas about who to subpoena, who to call as witnesses, and
14 who has to do that.

15 But I can tell you that I am very, very reluctant to
16 turn this hearing about juror contact into a wholesale
17 exploration of every piece of conduct by the clerk alleged
18 to have been improper on its own, indicative of her or
19 characteristics of personality, or anything of that nature.
20 This is a very focused inquiry that deals with this jury
21 and what impact contact, if any, had on this jury. So, I
22 am very mindful of the limited nature of it. As I say, I'm
23 not excluding submission in advance of information that
24 would take the questions beyond the limited questions I
25 initially indicated. But I will be very hesitant about any

1 of those questions as it involves propounding those
2 questions to the jury.

3 As it involves questions to Ms. Hill similarly, this
4 is not a time to explore every mistake or incorrect
5 statement or false statement that ever has been made by
6 this witness. I am the judge of the credibility of this
7 witness for purposes of this new trial motion. I don't
8 think it's necessary, nor do I think it's proper, to
9 explore each and every impropriety alleged to have been
10 committed by the clerk. At the same time, what
11 specifically should be asked is something that I will look
12 at as I look at the submissions that are made before the
13 hearing takes place about what is requested be allowed as
14 topics for questioning of the clerk and what exhibits
15 should be used.

16 I can't imagine allowing thousands of emails to be
17 made exhibits in this process, either emails sent by her to
18 attorneys in the case, to other court officials in the
19 case, or to other individuals during the course of the
20 trial of the case. I certainly will try to preserve the
21 appellant posture of defense in this regard, but I will put
22 certain limitations on just a wholesale exploration of
23 every problematic piece of conduct, ethical dealings with
24 the county, and so forth. This is a very focused inquiry
25 about this jury and its ability to render the verdict it

1 rendered in an impartial manner.

2 So, I say that to tell you that when the clerk is
3 offered -- and I think the clerk is going to have to be
4 offered as a witness. The whole allegation revolves around
5 the contention that the clerk made contact with the jury
6 about matters material to their verdict, that that contact
7 was improper, and that it impacted their verdict. There is
8 a whole lot more that Mr. Harpootlian has indicated he'd
9 like to explore that I regard as totally extraneous to the
10 inquiry that we've maintained. I'm not going to allow
11 those questions to be asked by way of proffer and then have
12 the clerk answer those questions and have that be the
13 proffer, although I consider them irrelevant questions.
14 We're not going to handle the case in that way.

15 If I exclude a certain question from being asked, then
16 the proffer will be whatever in writing is chosen to be
17 offered in that regard, but I will not conduct a hearing
18 where there's a whole side hearing in which every question
19 desired is asked and will required to be answered or dealt
20 with in some other way. I don't think that is an
21 appropriate use of this very targeted hearing that I'm
22 directed to have.

23 I also think it makes a great deal of difference
24 whether the questions that are being asked relate to the
25 clerk's conduct at the time this case was tried as opposed

1 to other conduct at a later time or in connection with
2 other things than the trial of this case.

3 So, I will be looking very carefully before we conduct
4 this hearing and try to give the parties as much advice as
5 I can about what I would find to be acceptable topics to
6 pursue. I think you're entitled to that. But I also think
7 the record of the case is not to be used as a platform to
8 explore each and every fault of each and every witness,
9 whether it be the juror or the clerk, and I'm not going to
10 have the hearing conducted in that manner. I think there
11 are other ways of preserving topics that I rule should not
12 be pursued than having those questions asked and answered
13 even though I've ruled that they are not proper in the
14 hearing.

15 So, I hope that explains kind of where I am on the
16 subject of how questions are asked. And, therefore, some
17 of the suggestions that are made in the filings you've made
18 with me about the additional witnesses you'd like to call
19 and subpoena, I think we need to be sure we're all on the
20 same page about what is acceptable in evidence and what is
21 not. But I can tell you that I would not allow the
22 subpoenaing and examination of attorneys in this case, of
23 the judge who heard the case, or any of those type of
24 witnesses. This case is very focused on the jurors and the
25 clerk of court as I see it.

1 Now, it's about 11:15 or close to it. I'm going to do
2 this. I'm going to take a break for a minute. Let's take
3 until 11:25 as a break, and in that time I would hope that
4 you formulate the other things you think we need to look at
5 by way of the specifics of how this matter is to be
6 conducted.

7 I will then do two things when I come back. Ask you
8 for further ideas, both sides, as to who should be called,
9 get very specific about who can be called and who cannot,
10 who should offer these witnesses. And I would also at that
11 time ask those who represent potential witnesses in this
12 matter to come forward and have conversation with me about
13 your position on behalf of your clients.

14 I think that's generally important because as we have
15 the actual hearing itself, I've never heard of a situation
16 where a witness can have their lawyer actively participate
17 in the examination of the witness in a proceeding in which
18 the witness is being offered. So, I would not allow that,
19 but I think we can protect the legal positions that
20 attorneys for witnesses want to take and need to take and
21 want to put upon the record by pursuing the way I just
22 outlined, and I'll be prepared to do that when we return.

23 All right, Court will be in recess.

24 (OFF THE RECORD.)

25 THE COURT: Please be seated. Before we proceed

1 further, a few other things that you've been asked about
2 that I want to clarify before we then go forward with a
3 more specific look at how witnesses will be questioned.

4 First of all, how the jurors will be questioned,
5 everything will be done in open court. The jurors will be
6 referred to by number. The Court TV cameras which are the
7 ones used to film these proceedings will not be allowed to
8 focus on the image of the jurors as witnesses, and if
9 there's some need to further obscure the way they are
10 presented, we can talk about that, but they'll be examined
11 right here in the courtroom as the other witnesses would
12 be. And I've kind of looked to a little bit of exchange
13 we'll have with attorneys for the jurors to see what we can
14 work out about how exactly the jurors are presented, but
15 everything will be on the record here in open court with
16 measures taken to ensure the privacy of the jurors.

17 No photographs would be permitted of the jurors or
18 anything of that nature. And I believe if I announce that
19 in advance, the press that are present and press that have
20 covered this proceeding throughout have been respectful of
21 the judge's request, and I am very confident they will be
22 in this matter as well.

23 With respect to the alternate jurors, I will question
24 only the jurors who sat and considered this case. So, the
25 alternate who was dismissed, was dismissed by the trial

1 judge, that alternate did not participate in any way in the
2 deliberations in this case. There's nothing that has been
3 brought to my attention about anything the alternate might
4 have done that was improper at all in terms of
5 communications with fellow jurors; nothing's been alleged
6 in that regard. So, my focus will be on the jurors that
7 heard this case and not on either that alternate or any
8 other alternate juror that is been proposed for
9 questioning. I will not permit that.

10 With witnesses or testimony, I do not allow -- let me
11 explain about proffer. Proffer will be a written proffer
12 by the party to satisfy the limitations of my ruling, but
13 there will not be some examination as to proffer. The
14 proffer will be a written proffer by the attorneys in
15 accordance with their positions about witnesses and
16 testimony.

17 With regard to the subpoenaing of witnesses, the
18 parties should subpoena these witnesses, and when it comes
19 to the jurors, I would urge that the parties, the state and
20 the defendant, jointly deal with the issue of subpoena of
21 these witnesses. I do not think it is the court's place to
22 subpoena witnesses or order witnesses' appearances.

23 This case is driven by the parties and their
24 positions. The initial position of defense was that only
25 certain jurors should be called; the state said no jurors

1 should be called but if you do, all should be called. All
2 who sat on the case should be called. If the parties can't
3 agree on how that subpoena should be accomplished, I'm sure
4 -- let me know, and I will try to take some measures in
5 that regard.

6 The concept I would have is that jurors would be --
7 would report to a place that I will specify, and when they
8 report, they would be taken to a room with appropriate
9 supervision by court personnel and then called individually
10 to recite their testimony, and when their testimony was
11 complete, they would simply take their place in the jury
12 box until all were questioned. And then if there were any
13 questions further by me that would be made collectively to
14 the jury, I could do that. And if there are any further
15 questions submitted to me by the parties that I chose to
16 question, I would do that. And then when all of that was
17 complete, the jurors would be allowed to be dismissed. So,
18 that is how I would handle the juror witness portion of
19 this. And, of course, I know I'm going to take some
20 commentary from each side about that. That's why I talk
21 about this in advance.

22 The other witness that surely needs to be called
23 because of the allegations made is the clerk of court. The
24 State has submitted a preliminary affidavit by the clerk of
25 court, and the defense has many areas that they want to

1 explore for the court. Again, I would like for the parties
2 to develop some joint way of subpoenaing the clerk of
3 court, and if I need to be a part of that, then I'm sure
4 the parties will let me know.

5 But I say this for the benefit particularly of the
6 attorney for the clerk of court to know that I would expect
7 that the clerk of court will be called as a witness in
8 these proceedings 29th, 30th, and 31st if necessary.

9 You will be using the same courtroom for these
10 proceedings, this courtroom, and 3B will be used as an
11 overflow for the press. Excuse me, 3A is the one over
12 here, and that's the one I will be using to conduct the
13 hearing. This courtroom we're sitting in now will be an
14 overflow courtroom for press with, I'm sure, Court TV
15 monitor that's available for them to monitor the
16 proceedings if there's not enough room. Based on the
17 attendance today, might be plenty of room but we'll see.
18 We'll have this as -- I will try to figure out a way to be
19 sure that the broadcast in here of the proceedings will not
20 interfere with the conduct of the hearing past this
21 partition next door.

22 I will trust Mr. Bender to work with the press and the
23 overflow courtroom in accordance with the rules I'm going
24 to set forth here and anything else that may come up that
25 needs my attention. I think that covers it at the present

1 time.

2 So, the first thing I'd like to do is to get some
3 clarity from the attorneys as to what further more, for the
4 parties, as to what further more needs to be discussed, and
5 then after that we will explore the attorneys for the
6 jurors and the attorney for Clerk Hill. Any other issues
7 that still need developed?

8 Mr. Harpootlian.

9 MR. HARPOOTLIAN: Please the court, Your Honor. I'm
10 trying to make sure I understand what you just ruled. Are
11 you ruling we cannot call the alternate juror or the
12 so-called egg lady to corroborate what was said to the
13 sitting jurors as they were all told at the same time?

14 THE COURT: I'm not sure I understand your question,
15 but I'm telling you that I want -- these jurors, these
16 alternates would be called apparently to testify as to what
17 the clerk said.

18 MR. HARPOOTLIAN: Yes.

19 THE COURT: At the present time, I see no necessity
20 for them to be called to say what the clerk said because
21 we're talking about what the clerk said to the remaining
22 jurors, those who actually sat upon the case. The
23 corroboration is something I don't think I need at this
24 time. I think I'm perfectly capable of evaluating what the
25 jurors tell me and I'll do that. I think I'm also

1 perfectly capable of evaluating the credibility of Ms. Hill
2 and the jurors, for that matter.

3 MR. HARPOOTLIAN: Well, Your Honor, for us to -- and
4 then you say you wouldn't allow a proffer of that except in
5 writing.

6 THE COURT: Yes. I'm not going to have a courtroom
7 proffer of any kind. If you want to proffer what would be
8 offered by means of affidavits, copies of emails, or
9 anything else you want to, that's fine, but I'm not going
10 to have a courtroom proffer, no. I think you're -- the
11 only reason for the proffer would be to preserve your right
12 to appeal. I believe your right to appeal my ruling will
13 be perfectly be preserved, frankly, if you didn't have a
14 proffer, but even more so if you supply an in-writing
15 proffer.

16 MR. HARPOOTLIAN: Well, I'm trying to determine
17 whether an affidavit is sufficient for an appellate court,
18 federal or state, when the state won't have an opportunity
19 to examine that witness. I mean, they've given -- we can
20 get more detailed affidavits. And, you know, these people
21 are witnesses to what the clerk said to the jury that
22 deliberated. I don't understand how that can't be relevant
23 to Your Honor's decision.

24 I understand there's two steps; one, did she make the
25 statement; two, was it prejudicial. These witnesses

1 corroborate she made the statement.

2 THE COURT: Well, of course, that's what you say. So
3 far I haven't seen any of that. If that's what you say and
4 you offer it to me in some form that I can evaluate it, I
5 may revisit that decision.

6 MR. HARPOOTLIAN: Okay.

7 THE COURT: At the present time ---

8 MR. HARPOOTLIAN: Okay.

9 THE COURT: But at the present time, I see nothing
10 that prompts me to think I need to have people who did not
11 sit on the case talk about what they think the clerk said
12 to other people when I've got the direct people to whom
13 it's said that I will question.

14 MR. HARPOOTLIAN: Well, Your Honor, we did submit an
15 affidavit, but I have no problem going back ---

16 THE COURT: You submitted one alternate affidavit.

17 MR. HARPOOTLIAN: Right.

18 THE COURT: And one affidavit of a dismissed
19 alternate. I'm aware of that.

20 MR. HARPOOTLIAN: Right. So.

21 THE COURT: And that doesn't prompt me to change what
22 I've just said to you at all.

23 MR. HARPOOTLIAN: If we could be more, more -- I
24 understand what the questions are you have, and I would
25 only put those folks up to deal with those very limited,

1 very limited issues that you described, put them up in ten
2 minutes.

3 THE COURT: Well, again, I'm not going to rule in a
4 vacuum. I'll see what you say, and I'll rule upon it.

5 MR. HARPOOTLIAN: We'll get affidavits and file them
6 with the Court.

7 THE COURT: Very good.

8 MR. HARPOOTLIAN: Thank you.

9 MR. WATERS: Your Honor, just one issue as to
10 logistics. Obviously, these jurors are down in Colleton
11 County and we're up here in Richland County. I've spoken
12 to SLED, and in as much as we need -- you know, there may
13 be jurors who need transport, you know. SLED has certainly
14 agreed to have twelve cars if we need to to make sure that
15 they're individual. They can come in through the garage,
16 and obviously they would be brought up to a jury room. I
17 think Your Honor indicated they could be in a jury room
18 with a bailiff in there, make sure that no one is talking
19 about their testimony and that sort of thing. But also so
20 that they don't have to come in through the public entrance
21 and that sort of thing. So, that would be ---

22 THE COURT: I think that would be a good solution and,
23 of course, to satisfy the concerns that the defense may
24 have, you could even have a member of the defense team or
25 one of their employees ride with them. Or if you can agree

1 upon sworn statement by the agent or person that does drive
2 them that they, A, will not say anything and B, did not say
3 anything, then that may cure the problem, too. I think you
4 all can work that out. I do think having proper transport
5 would, first of all, be a comfort to the witnesses
6 themselves, the jurors themselves, but if they can arrange
7 something otherwise, of course they'd be free to do that.
8 But to the extent it is a burden on them, yes, I think it's
9 a good idea. And in all events, I would want arrangements
10 to be made to have the jurors come to the parking garage in
11 this building and be escorted up in a private way into
12 their assembly room.

13 MR. WATERS: Yeah. Absolutely, Your Honor, and we
14 will -- I'm sure SLED -- I've already spoken with them
15 about that, have uninvolved agents who will be under strict
16 instructions not to discuss the case and happy to have them
17 sign affidavits for whatever.

18 THE COURT: Very good. All right, anything further
19 before I go to the lawyers for the jurors? All right.

20 MR. HARPOOTLIAN: Your Honor, only one other point and
21 that is you've asked us to give you exhibits that we would
22 use.

23 THE COURT: Yes, sir.

24 MR. HARPOOTLIAN: Having not asked or had the
25 opportunity to ask Ms. Hill a single question, I don't -- I

1 can't tell you -- there's not thousands of emails. I would
2 use probably five.

3 THE COURT: I'm just going on some of the descriptions
4 that were in the filing y'all have made to me.

5 MR. HARPOOTLIAN: Well, we've received thousands of
6 emails from Colleton County based on the subpoena we sent;
7 we received hundreds of pages from the AG's office and
8 SLED.

9 THE COURT: It will make it a lot simpler if it's a
10 small number and a discrete number by submitting them to
11 me. Again, I told you I would evaluate that when I get it.

12 MR. HARPOOTLIAN: Of course, I don't think you can
13 evaluate them until she testifies.

14 THE COURT: I think you're going to have to trust that
15 I am going to do some evaluating before she testifies.

16 MR. HARPOOTLIAN: Okay, and, Your Honor, you know,
17 she's given an affidavit denying any of these statements.

18 THE COURT: She has.

19 MR. HARPOOTLIAN: So, these alternate jurors that have
20 been dismissed, would you allow us to call them to impeach
21 her if that's what she testifies to?

22 THE COURT: At the present time, the answer to that is
23 no, as I've indicated, but again I'm not going to rule in a
24 vacuum. I would hope that what you all would do is send me
25 a pretty specific idea of what you want and how you want me

1 to permit it. So, I'm not going to rule on something I
2 haven't seen yet, which is your proposal as to how exactly
3 these witnesses and alternates are to be used.

4 MR. HARPOOTLIAN: All right. We'll get more extensive
5 affidavits from those alternates.

6 THE COURT: Okay. That's fine or descriptors of some
7 sort from you as to what you intend to do. I'm not going
8 to dictate how you do it, but I'm going to have to have a
9 lot more than just generalities that have been discussed in
10 these briefs in order to permit such.

11 MR. HARPOOTLIAN: Well, I think we're going to need
12 affidavits for appellate purposes, if nothing else. My
13 description to you is not evidence.

14 THE COURT: Oh, I agree but, you know, again I will
15 tell you how I'm going to accept a proffer. How you --
16 what you put in the proffer, written proffer, is up to you.
17 I don't want to dictate that or manage it.

18 MR. HARPOOTLIAN: Well, I just want to say that we're
19 hopefully going to get affidavits from these folks.

20 THE COURT: Yes, sir.

21 MR. HARPOOTLIAN: Much more descriptive than the
22 original affidavits.

23 THE COURT: All right, sir.

24 MR. HARPOOTLIAN: Thank you.

25 THE COURT: All right.

1 MR. WATERS: Your Honor, may I consult with counsel
2 very briefly?

3 THE COURT: Certainly.

4 (A PAUSE.)

5 MR. WATERS: Your Honor, one of the things that was
6 discussed earlier was the independent SLED investigation
7 that was done. There were recordings of some of these
8 interviews.

9 THE COURT: Yes, sir.

10 MR. WATERS: And analyzed, prepared, and were meant to
11 be summaries. I know Your Honor mentioned earlier that you
12 would be open to receiving those.

13 THE COURT: Sure. I'll be glad to review any of that.

14 MR. WATERS: Discussed that with counsel, and I
15 believe they said, well, we want to send the ones we want
16 to send. I think if Your Honor is amenable to that, we
17 would just add Your Honor to the discovery upload that was
18 provided to the defense so that that information is
19 available to the Court for whatever purposes the Court
20 deems necessary.

21 THE COURT: Can I ask this first? Would that
22 discovery upload include your interviews, the tape of the
23 interviews, as well as your summary of them?

24 MR. WATERS: Yes, ma'am.

25 THE COURT: All right. I will ask you to let my

1 clerk, Eva Diaz, talk with you afterwards about how to send
2 me something of that volume.

3 MR. WATERS: Sure.

4 THE COURT: Our court IT has a lot of barriers in our
5 system to us receiving even conventional websites and web
6 tools for examining, in volume, documents, and so I will
7 want her to interact with you all about exactly how I am to
8 receive that material, but yes, I will be happy to receive
9 it.

10 MR. WATERS: We, we'd be happy to get flash drives to
11 provide, provide it that way, if that makes sense.

12 THE COURT: That might be the better way to do it
13 because, again, I can very easily examine a flash drive
14 even though it takes a long time, and particularly if you
15 are kind enough to provide an index at the front of the
16 flash drive as to where these various materials are
17 located. That might be better than using one of these web
18 document sources since so many of them are excluded from
19 our system.

20 MR. WATERS: We'll prepare one and have a copy for
21 you, Your Honor, and Ms. Diaz, your clerk.

22 THE COURT: That would be good.

23 MR. WATERS: Thank you.

24 THE COURT: All right. All right. Now, on my list I
25 have in the courtroom at this time Mr. Bland, who

1 represents certain of the jurors; Mr. McCulloch, who
2 represents certain of the jurors; and Mr. Lewis represents
3 Ms. Hill. Are there others in the courtroom who represent
4 jurors or Ms. Hill?

5 Mr. RICHTER: Thank you, Your Honor. Ronnie Richter.
6 I'm Eric Bland's partner.

7 THE COURT: Running a little fast for me.

8 MR. RICHTER: Ronnie Richter, Mr. Bland's partner.

9 THE COURT: Oh. Right.

10 Any others?

11 All right, well, then we'll begin with you, Mr. Bland.
12 If you and Mr. Richter would come forward?

13 MR. BLAND: May it please the Court, Your Honor?
14 Ronnie and I represent four jurors who rendered verdicts in
15 this case.

16 THE COURT: I would like their numbers off that --
17 only if that doesn't violate the attorney-client privilege,
18 and you may give them to me now or later.

19 MR. BLAND: Can I give them to you later?

20 THE COURT: Yes.

21 MR. BLAND: I've got them now. I just -- our job, we
22 want to preserve their anonymity.

23 THE COURT: I understand.

24 MR. BLAND: Two, we want to make sure they are not
25 harassed, and three, we want to make sure that the verdicts

1 of their conscience remain, and that is not only because
2 they voted guilty. If they voted not guilty, we'd feel the
3 same way.

4 After hearing what Your Honor has established by the
5 way of procedures, we've very comfortable with what you
6 have established to protect their anonymity and that
7 they're not harassed.

8 Ronnie came up with a good suggestion. May you
9 renumber the jurors 1 through 12, and that way because
10 there has been some public disclosure of the jurors'
11 numbers in some of those emails, they were -- the big batch
12 of emails that Mr. Harpootlian referenced. So, maybe we
13 cross reference with the chart 1 through 12 and their juror
14 numbers.

15 But as far as the questioning goes, there's no need
16 for us to, to be part of this. You're going to make the
17 questions. You've indicated you're going to preserve their
18 anonymity -- that they can't be photographed, they can't be
19 on videotape -- and that's about all we have.

20 MR. RICHTER: Again, Your Honor, I would amplify I
21 certainly respect and appreciate the significance of the
22 issues before you. And, and I respect your decision that
23 you're going to make this public. I would have asked you
24 to make the jury portion closed courtroom and, Your Honor,
25 only, only for this reason.

1 That I don't know what the jurors are going to say,
2 and I don't know what you're going to rule, but let's just
3 say in a hypothetical setting that because Juror Number 9
4 said something that you believe deprived Mr. Murdaugh of
5 his right to a fair trial, you're going to grant him a fair
6 trial -- a new trial. I, I would hate for there to be any
7 negativism for somebody to back trace to who was Juror
8 Number 9 because the public has very firm opinions about
9 this matter, and I wouldn't want that person to be subject
10 to any kind of public scrutiny. So, I would have asked of
11 you that for the juror portion of it we do closed
12 courtroom; that the press would be present; that their
13 likeness, both voice and face, be muddled just as an
14 additional safeguard. But I certainly appreciate the
15 safeguards you have put in place, and I respect your
16 ruling. I throw that out for consideration.

17 And on a broader perspective, I know that you've had
18 this experience as well, Your Honor. It's becoming more
19 and more difficult in this state to seat a jury, and I
20 can't think of anything more injurious to jury service from
21 a broader perspective than to see, you know, jurors who've
22 given up six weeks of their lives being pulled back in for
23 a process like this, as necessary as it is. So, I, I worry
24 that the process, we handle it as gingerly as possible so
25 not to further prejudice our ability to get jurors going

1 forward.

2 THE COURT: Thank you, sir. What I will do is this.
3 I think your suggestion of renumbering is a good one. It's
4 something that my clerk and I have talked about between the
5 two of us as well.

6 In every proceeding I've ever seen where a juror was
7 questioned, in every case I've ever read where jurors were
8 questioned because of allegations either during trial or
9 posttrial that they had been tampered with, those
10 proceedings have been in open court. And I don't feel it
11 would be appropriate for me to have some kind of *in-camera*
12 proceeding even if it included the attorneys, as it would
13 have to, and even if it included members the press but not
14 the general public. I don't think that is in keeping with
15 the public nature of trials in this state and the public
16 nature of court proceedings.

17 However, I think we could make some protective
18 arrangements for when they testify and their ability to be
19 dismissed after they've testified that would protect them
20 from being set upon to the best extent possible. So, that
21 is -- that is the way I will handle it, and I hope, all
22 things on balance, that that as protective as you think it
23 needs to be.

24 MR. RICHTER: We trust you, Your Honor.

25 THE COURT: All right, sir.

1 MR. BLAND: Your Honor, on behalf of our clients, we
2 will accept service of the subpoena so that they don't have
3 to served.

4 THE COURT: Well, that's great and, of course, you
5 don't represent all of them.

6 MR. BLAND: No. Our four.

7 THE COURT: Your four, but that's great and it may
8 very well be that these parties are going to be able to
9 work out something with respect to some of the rest of
10 them. I don't know, but I appreciate that on behalf of the
11 ones you represent.

12 MR. BLAND: Do you want me to come up and tell you our
13 juror numbers, or you want me to wait?

14 THE COURT: No, sir. I don't need that this moment.

15 MR. BLAND: Okay. Thank you.

16 MR. RICHTER: Thank you, Judge.

17 THE COURT: Yes, sir.

18 Mr. McCulloch.

19 MR. McCULLOCH: Would you like me here or there?

20 THE COURT: Go to the podium, please, sir.

21 MR. McCULLOCH: Your Honor, I believe some of the
22 Court's rulings today, they've satisfied several of the
23 things I was going to mention. One was, of course ---

24 THE COURT: And how many jurors do you represent?

25 MR. McCULLOCH: I'm sorry, Your Honor. I represent

1 Number 785 and 630 as a deliberating juror, and the other
2 juror was the removed juror.

3 THE COURT: Right. Now, with respects to the replaced
4 juror, I think my ruling about the ambit of any testimony
5 from that juror satisfies any requirements you've made.
6 I've ruled that I will not hear testimony from that juror,
7 alternate juror at the present time.

8 Now, Mr. Harpootlian is going to submit additional
9 information as regards your client. I'd ask him to submit
10 that information to you as well, and then I'll see if
11 there's any revision of the position I take about that.

12 You also represent one sitting juror, so you may
13 continue.

14 MR. McCULLOCH: Your Honor, the other juror was not an
15 alternate. She was actually a seated juror.

16 THE COURT: Sitting juror.

17 MR. McCULLOCH: Who was removed at the end.

18 THE COURT: Oh.

19 COURT REPORTER: I need Mr. McCulloch to speak up,
20 please.

21 THE COURT: You need to speak up some, Mr. McCulloch.

22 MR. McCULLOCH: I don't get that much, Your Honor.

23 THE COURT: Yes, sir.

24 MR. McCULLOCH: Your Honor, if you'll indulge me just
25 a moment? I think much of what you've said today bears on

1 the quote that I'm taking from the response of the State
2 which was filed and is part of your record, and my letter
3 of November 10th responding to that filing is also a part
4 of your record. The state said that:

5 Jury duty is this cornerstone civic duty.

6 Needless exposure to jurors to litigative stress
7 and impeachment by zealous attorneys in a case
8 especially of this public exposure can only serve
9 to discourage the citizens from willingly
10 participating in jury -- in this civic duty.

11 Your Honor, I am delighted with your ruling that
12 you'll be asking the questions. I've been subject to your
13 interrogative skills in my appearances before the Supreme
14 Court. So, I'm pleased with that, and I checked that off
15 my list.

16 I would like, Your Honor, for you to take judicial
17 notice that there have been excessive public comments by --
18 and I -- and I have to say, Your Honor, in my letter of
19 November 10th, I took Mr. Waters, who signed the letter, to
20 task for labeling one of my clients, one of these jurors,
21 as dishonest. I think I didn't -- I wasn't pleased with
22 that. I think that discourages civic participation. I
23 would ask the Court to admonish the litigants, the
24 attorneys ---

25 THE COURT: I'm not going to -- Mr. McCulloch, let me

1 stop you there. I am not aware of any of what you're
2 talking about in terms of comments about the jurors or
3 otherwise. So, that's just not something I'm going to take
4 into account by listening to it or by taking any judicial
5 notice of it. I don't know what I would be taking judicial
6 notice of; I do not know anything about what you're talking
7 about.

8 MR. McCULLOCH: Well, Your Honor, both my letter and
9 the response of the State are part of the record which you
10 obviously have not gotten to yet. My only request is
11 either admonish lawyers and officers of the court in this
12 courtroom and outside of this courtroom who represent
13 people to be cautioned that, that we -- that this is a
14 search for the truth, not an effort to protect the verdict
15 nor an effort to discourage people from participation, and
16 negative commentary does that, or runs the risk of doing
17 that. That's all I have to say.

18 THE COURT: I understand and I decline to instruct or
19 admonish participants in this procedure in any way about
20 what you say.

21 MR. McCULLOCH: Thank you. Your Honor, next, like
22 Mr. Richter and Mr. Bland, I appreciate your efforts. I
23 suspect is that we will decline a ride to the courthouse,
24 but I would ask the Court to consider allowing the jurors
25 who don't -- choose not to ride with SLED agents to be

1 permitted entry and exit from the courthouse that would
2 involve -- relieve them of the necessity of coming through
3 the front door.

4 THE COURT: I think I've already said I will make
5 arrangements for juror witnesses to report to the basement
6 where the law enforcement station is, and they will be
7 appropriately directed to the assembly room.

8 MR. McCULLOCH: Your Honor, lastly, if I understand
9 your ruling or discussions about the process that occurred
10 here -- this may run at odds with Your Honor, and I'm not
11 arguing with you. But I am of the belief that this
12 litigative stress earlier referenced could be avoided and
13 the public media not denied their opportunity to, to gain
14 access and knowledge of the proceedings by not exposing
15 these jurors to a crowded gallery, a full gallery of press
16 by allowing its recording through -- I understand Court TV
17 will be the pool camera. That is to say that I have
18 actually in my history participated in proceedings that
19 involved the questioning of jurors which was done *in*
20 *camera*. So, I, I don't think it's without any precedent,
21 but I would obviously respect your ruling. But I would ask
22 you to consider or reconsider that no damage would be done
23 to the right of the public to know and participate in the
24 proceedings, but you could accomplish the same thing by
25 allowing the, the pool camera and avoid the distraction and

1 the imposition of that on these jurors.

2 THE COURT: I hear what you're saying, and I'm not
3 inclined to change the ruling I have made at the present
4 time, but I'll keep an open mind about it as we make
5 pretrial preparations for the hearing. At the present
6 time, the jurors will be examined in the courtroom, as I
7 have indicated, with the appropriate identity protection.

8 MR. McCULLOCH: Thank you, Your Honor, and subject to
9 your rulings, I will have both of my clients available for
10 these parties as they might be needed subject to your
11 subsequent rulings.

12 THE COURT: Thank you.

13 MR. McCULLOCH: Thank you.

14 MR. RICHTER: Your Honor, do you expect all jurors to
15 be present for all three days?

16 THE COURT: No. Let me make it very clear that I
17 expect the jurors to be the first witnesses to be called in
18 these proceedings. And the jurors would testify, and then
19 they would be dismissed. They would not be required to
20 stay for the rest of the proceedings at all. So, that is
21 very much a part of my thought of what it takes to protect
22 their identities. They would be protected as best I can,
23 and the ability of others to come and beset them with
24 questions as they leave would be protected.

25 MR. BLAND: Do you -- do you expect that you could get

1 through all twelve in one day, or should I tell them --
2 because a couple will have to take off of work.

3 THE COURT: Yes, I do.

4 MR. BLAND: Okay. Thank you.

5 THE COURT: All right, and, Mr. Lewis.

6 MR. LEWIS: Your Honor, I'll be brief. In light of
7 your rulings, I don't think you need much from me. The
8 only thing that I'll add is I'll have Ms. Hill available
9 for you as the parties need, and I'll be happy to accept
10 service to alleviate one issue for this Court.

11 THE COURT: All right, sir. Thank you for that, and
12 before you leave the podium, let me just consult with the
13 lawyers. I'm not going to ask them to examine you. That
14 wouldn't be fair at all, but I'm going to ask them if
15 there's anything else I need to inquire of before I let you
16 go.

17 As I understand it, the subpoena -- and we would have
18 a formal subpoena of Ms. Hill -- would be placed in your
19 hands as her attorney, and you would assure her appearance,
20 and I appreciate that very much.

21 MR. LEWIS: Absolutely.

22 THE COURT: Is there anything else on behalf of Mr.
23 Murdaugh?

24 MR. HARPOOTLIAN: Thank you, Your Honor, and just in
25 an effort to try to expedite this matter, I'd have two

1 questions. One, will Ms. Hill meet with Mr. Griffin and I?

2 MR. LEWIS: I'll evaluate that.

3 MR. HARPOOTLIAN: You'll have to evaluate it? Okay.

4 That's all I need to ask. And secondly, should we have her
5 here on that Monday or wait? I mean, we could be doing the
6 jurors most -- all day.

7 THE COURT: She should be here as court begins.

8 MR. HARPOOTLIAN: All right. Thank you.

9 MR. WATERS: Nothing from the State, Your Honor.

10 THE COURT: All right.

11 MR. LEWIS: Thank you, Your Honor.

12 THE COURT: I'll go over my checklist one more time,
13 but I think I covered everything I want to cover. I'll
14 come to each of you in a moment.

15 Yes, just, just to clarify other witnesses, as matters
16 now stand, witnesses in this proceeding would be jurors and
17 Ms. Hill. So, I want to be sure that we're all
18 understanding what's going on in that regard. I would not
19 allow the attorneys to be called. I am unclear about the
20 mention in some of the papers that SLED investigators would
21 be asked to testify or any other witnesses, so I'm going to
22 go one more time. I want to get real specific so you will
23 understand what you need to prepare for by way of in-court
24 examination and what you need to prepare for by way of
25 submitting proffer.

1 All right, first of all for the defendant.

2 MR. HARPOOTLIAN: Please the Court, Your Honor? Just
3 a couple of issues. One, we don't know who we're going to
4 call to impeach Ms. Hill because we don't know what she's
5 going to say. So, it's difficult for us. I mean, we -- I
6 mean, once she testifies, at that point we'd say we'd like
7 to call so-and-so and so-and-so and such-and-such and
8 such-and-such, number one. So -- or maybe no one. I mean,
9 she may concede every issue we have. For instance, she did
10 tell, according to the State, she did tell one of her
11 assistants, one of the people helping her, you know, I hope
12 he's found guilty because it will help book sales. Now ---

13 THE COURT: I hope that's the last time you're going
14 to repeat that until I ask for it again, Mr. Harpootlian.
15 I've told you that I can't imagine a situation in which I
16 would go that far, a statement like that, and she may well
17 have said it. If it goes to anything I'm asked to
18 consider, it would be to her credibility. And I'll
19 evaluate whether I think that's even proper to ask, but
20 let's move on from that.

21 MR. HARPOOTLIAN: So -- but there are other questions
22 concerning her credibility.

23 THE COURT: Yes, sir.

24 MR. HARPOOTLIAN: 404 motive. If she -- I mean, if
25 she did this, it is a crime and so, you know, the questions

1 of why she would have done this extraordinary act, and we
2 can argue this at another time, but in terms of being --
3 the reason I mention it is for us to proffer those people
4 not knowing what she may, may -- the question may get
5 asked. She may admit it. There's no witness that needs to
6 be called.

7 So, it's difficult for me to game this out. I don't
8 think I've ever been asked to list witnesses I would call
9 to, to impeach somebody if they lie under oath. I have
10 never heard of such a thing, but I will attempt to do the
11 witnesses we would call prior to Ms. Hill's testimony.
12 That's all I think I can do, if that makes sense.

13 THE COURT: It doesn't make complete sense to me
14 because this is not the trial of Ms. Hill. And issues
15 about motive and so forth and the possible commission of
16 crimes are not what this inquiry is about. It is about her
17 contact, if any, with the jurors and what she said. So, I
18 will be treading very carefully with a good deal of what
19 you say about what you might or might not ask.

20 But I am going to ask all the parties to be pretty
21 specific with me about what I ask, I should be asking the
22 jurors, and I can make a decision in advance as to what I
23 am going to do about that and what is going to be, at least
24 by general topic, pursued with witnesses.

25 MR. HARPOOTLIAN: Yes, Your Honor.

1 THE COURT: And the reason I do that is because it
2 gives me the opportunity to then consider what rulings I
3 would make and move the proceedings along in an orderly
4 way.

5 MR. HARPOOTLIAN: Well, Your Honor, it may be
6 premature for me to note this for the record, but we would
7 except your ruling on that.

8 THE COURT: All right, sir.

9 MR. HARPOOTLIAN: Secondly, Mr. Murdaugh has been
10 unable to review any of the discovery material in this case
11 because of the confidential -- confidentiality order
12 prohibits him -- us to distribute to him while he's in
13 jail. We don't have time in the next less than two weeks
14 to go sit down with him and review everything.

15 Would Your Honor allow him to have them? And the
16 materials are not as to the evidence in the underlying
17 case. It's as to juror issues. And while he's no longer a
18 lawyer, he was a lawyer at one point and can -- and
19 evaluate this and be of assistance to us if he has an
20 opportunity to review that material.

21 THE COURT: You're speaking to me about something in a
22 complete vacuum as far as I'm concerned. So, I can't
23 really evaluate what you haven't been able to review with
24 him and what you have been able to review with him.

25 As I understand what you're telling me is I have

1 received certain information as the attorney for defendant
2 that I have not been able to show defendant for defendant's
3 review because of a confidentiality order.

4 MR. HARPOOTLIAN: Yes, Your Honor.

5 THE COURT: I can't imagine that. I think what you
6 may be saying is Mr. Murdaugh has not been able to keep for
7 himself while I'm not there confidential material.

8 MR. HARPOOTLIAN: That's correct.

9 THE COURT: Well, that is something common to many
10 folks who are under incarceration and are limited in the
11 kind of materials that they can receive and keep in their
12 possession when they are not with their lawyer. So, this
13 is not an issue where he's being deprived of the ability to
14 consider material that you have received. This is a
15 question of whether he can have that material in his
16 possession when you are not there or your representatives
17 are not there and study upon it and so forth.

18 I can't control what the limitations of the Department
19 of Corrections are, nor can I control what limitations may
20 have been put on the confidential material because of the
21 fear that it would be -- it would fall into other hands.
22 So, I'm not going to rule in the abstract on things. I
23 would have to have something that was pretty specific.

24 But I can tell you this. I would certainly not order
25 that these materials be wholesale given to him for him to

1 take back to his cell and have in his possession because I
2 don't know who might see them, were that the case. And if
3 they are confidential materials, that would be an extreme
4 risk of breaching the confidentiality of materials to do
5 that because of his situation. And his situation is as it
6 is not of my making or yours.

7 MR. HARPOOTLIAN: Your Honor, we'd only note for the
8 record this. Much of the material received has been within
9 the last two weeks. This hearing is scheduled for two
10 weeks from yesterday.

11 THE COURT: Yes, sir.

12 MR. HARPOOTLIAN: We've been -- and you've given us
13 more stuff we have to do between now and that hearing.
14 There's nobody to go sit with him at the jail, and time is
15 limited as to when those, those people can visit. So,
16 without him being able to view this material, I don't
17 believe we can be effective and would be ineffective in
18 representing him.

19 THE COURT: Well, I understand that those are wise
20 statements for an attorney to make to preserve your
21 position on the record. It doesn't change my view of how
22 we should proceed in this matter at all.

23 MR. HARPOOTLIAN: Well.

24 THE COURT: I think you will be able to -- if there
25 are deficits in what you have been able to do with your

1 client, you will place those contingents on the record, and
2 the appellate courts of the state will have adequate chance
3 to review them.

4 MR. HARPOOTLIAN: Well, Your Honor, would you consider
5 continuing the hearing on the 29th to allow us to meet with
6 the client to effectively review these materials?

7 THE COURT: No, sir.

8 MR. HARPOOTLIAN: Okay.

9 THE COURT: Thank you.

10 MR. HARPOOTLIAN: We respectfully except your ruling.

11 THE COURT: I understand.

12 MR. HARPOOTLIAN: Thank you.

13 THE COURT: Mr. Waters.

14 MR. WATERS: I don't have much to address, Your Honor.
15 The initial question Your Honor asked was about SLED agents
16 being listed on the potential witnesses. You know, again,
17 Your Honor, when these allegations were first raised, we
18 instructed SLED to do an independent investigation, good,
19 bad, or ugly, and only because of the results of that
20 investigation are the reason why we're standing here and
21 litigating these issues before Your Honor.

22 Ultimately, the only way that SLED agents could
23 potentially be testifying, again when we filed our
24 response, we didn't know exactly the parameters the Court
25 would rule. The only way I can see them potentially

1 testifying is in the event there is an excepted witness by
2 Your Honor that there was some sort of prior inconsistent
3 statement under Rule 613 or some other permissible inquiry.
4 But I think Your Honor's rulings as to the, the nature of
5 the inquiry we're going to conduct would probably remove or
6 make it very unlikely that may be.

7 THE COURT: All right. Anything further?

8 MR. WATERS: Nothing from the State, Your Honor.

9 MR. HARPOOTLIAN: Nothing from -- nothing from the
10 defense, Your Honor.

11 THE COURT: I say to attorneys for both sides the
12 Court is deeply grateful for the very fine materials you
13 have submitted so far. This is an extreme amount of work
14 in a very truncated period of time, and I appreciate the
15 burdens this places upon you.

16 Mr. Harpootlian, I particularly thank you as a member
17 of the General Assembly for not interposing your immunity
18 because you are in session, and I respect that. I set
19 these matters after consultation with y'all so that I could
20 fulfill my obligations to the Court, as expressed in Chief
21 Justice Beatty's order, but I realize that I'm doing that
22 with your extreme cooperation in light of your other
23 duties, and I appreciate it very much.

24 MR. HARPOOTLIAN: Thank you, Your Honor.

25 THE COURT: I look forward to further submissions from

1 the parties and the hearings commencing January 29th.

2 Court will be in recess.

3 MR. WATERS: Thank you, Your Honor.

4 MR. HARPOOTLIAN: Thank you, Your Honor.

5 (OFF THE RECORD.)

6 THE COURT: Parties, just one moment. I asked Ms.
7 Harris before these matters commenced to please expedite,
8 even if it's in a rough form and not in the perfect form
9 that the court reporters like to produce their transcripts,
10 I asked her to produce a rough copy of the transcript just
11 as soon as she possibly could for both sides. I hope you
12 all will consider without me having to order it sharing the
13 expense of this production, this early production of the
14 rough copy of this matter. She will be in touch with you,
15 and you may be in touch with her with regard to the rough
16 transcript of these proceedings.

17 Court will be in recess.

18 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR COLLETON COUNTY, SOUTH CAROLINA, ON
THE 16TH DAY OF JANUARY, 2024.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JUNE 17TH, 2024

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT J

(R. Harpootlian's Letter, January 25,
2024)



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January 25, 2024

RECEIVED

Jan 26 2024

S.C. SUPREME COURT

Chief Justice (Ret.) Jean Hoefer Toal
2418 Wheat Street
Columbia, SC 29205

In re: State v. Richard Alexander Murdaugh

Dear Chief Justice Toal,

I write in response to the email from Ms. Diaz dated January 24, 2024, communicating your desire for responses from counsel to the Court's proposed questions for jurors and for suggested questions and topics for the examination for Rebecca Hill. I have attached Mr. Murdaugh's proposed juror questions as **Exhibit A** to this letter.

Mr. Murdaugh objects to the Court's first proposed question, "The verdict of guilty you rendered on March 2, 2023, is that currently your verdict in this case?" The issue under the legal standard adopted by the court is whether Ms. Hill made comments during trial that affected the vote of any juror on March 2, 2023. Mr. Murdaugh objected to that standard, but even under it what a juror would or would not do a year after the trial has no possible relevance to any issue before the Court. Judge Hocker did pose a similar question to the jurors in *Green*, but he did so when polling the jurors *immediately* after the verdict and before they were discharged. Here, a year has passed since the start of Mr. Murdaugh's trial. Asking jurors how they feel about the verdict today is both irrelevant and prejudicial in that it invites jurors to consider a full year of post-trial media coverage when answering questions about events during trial. Further, if a juror did answer "no," the Court would be compelled to ask "why," which could have only two possible answers: some irrelevant consideration arising after the verdict, or reflection on some perceived defect in jury deliberations as to which the juror could not testify under Rule 606(b) of the South Carolina Rules of Evidence.

Mr. Murdaugh objects to the Court's second proposed question, "Was and is your verdict based entirely on the testimony, evidence and law presented to you in this case?" This question violates Rule 606(b), which provides in part, "Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as 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" This question violates the rule because it directly asks the juror what did or did not have an "effect" "upon that . . . juror's mind or emotions as influencing the juror to assent to or dissent from the verdict." Mr. Murdaugh understands the Court has decided to directly ask jurors about what affected their verdict because

it has held prejudice must be proven by evidence on that point rather than presumed based on the source and content of the illicit communications per federal authorities such as *Remmer v. United States*, 34 U.S. 227 (1958) and *Parker v. Gladden*, 385 U.S. 363 (1966), and state authorities like *State v. Cameron*, 311 S.C. 204, 428 S.E.2d 10 (Ct. App. 1993), and so he asserts this objection for preservation purposes.

Additionally, Mr. Murdaugh objects that the second proposed question is highly suggestive of an affirmative answer. It could (and likely would) cause a juror to reasonably believe the Court *prefers* he or she give an affirmative answer. Cf. § 2:21 *Questioning of witnesses by judge*, Trial Handbook for South Carolina Lawyers § 2:21 (5th ed.) (“The primary purpose of the trial judge’s questioning should be to clarify and promote a better understanding of the witness’s testimony, to elicit the truth, and to cover matters omitted by inadvertence or any other cause.” *State v. Stroman*, 281 S.C. 508, 316 S.E.2d 395 (1984); *Fowler v. Laney Tank Lines, Inc.*, 263 S.C. 422, 211 S.E.2d 231 (1975)). This question is an unnecessarily convoluted and indirect way of asking the question that needs to be asked. Reserving his objection to the Court’s rejection of the controlling legal standard and his Rule 606(b) objection, Mr. Murdaugh submits that under the Court’s prior ruling on the legal standard the proper inquiry is (1) did you hear Ms. Hill say anything about the merits during trial, and, if so, (2) did it in any way influence your verdict decision on March 2, 2023. The Court should ask those questions plainly and directly, without language mirroring the judge’s jury charge or otherwise suggesting a correct answer and without requiring additional inferences to get to the actual issue before the Court. Instead of asking a juror whether your verdict was entirely based on A to infer that it was therefore not influenced by B, the Court should just ask whether the verdict was influenced by B.

Mr. Murdaugh objects to the Court’s third proposed question, “Was your verdict influenced in any way with any communications by the Clerk of Court, Becky Hill, in this case?” This question directly violates Rule 606(b) for the same reason the Court’s second proposed question violates that rule. Mr. Murdaugh additionally objects that the language “your verdict” is unclear. It could be taken to mean the juror’s own vote, or it could be understood more literally to mean the collective decision of the jury of which the juror was a member. Mr. Murdaugh also objects to asking this question before asking the juror whether he or she heard any comments on the merits by Ms. Hill. If a juror heard no comments by Ms. Hill, there is no reason to ask what effect Ms. Hill’s comments had on the juror’s verdict. Reserving his Rule 606(b) objection, Mr. Murdaugh therefore proposes this question be asked after the juror is asked if Ms. Hill made any inappropriate comments, and that it be rephrased to as “Did Ms. Hill’s comments prejudice you against the Defendant Alex Murdaugh in any way?”

Mr. Murdaugh objects to the Court’s fourth proposed question, “Did you have any communication with Becky Hill about your verdict in this case?” and the follow up “If yes, what did Ms. Hill say?” because “have any communication with Becky Hill” is an unclear statement. Mr. Murdaugh suggests a more clear and direct question: “Did you hear Ms. Hill make any comments about the testimony, evidence, or arguments presented by the State or defense during Mr. Murdaugh’s trial?” If the answer is yes, in addition to asking what was said, Mr. Murdaugh believes the Court should ask when it was said, where it was said, and who else was present when it was said. And as explained above, Mr. Murdaugh believes what (if anything) was heard should be asked before the Court asks what effect it had.

Mr. Murdaugh again objects to including counsel for jurors participating in the merits of this proceeding, for the reasons previously briefed. He respectfully submits the Court should not have included Eric Bland in correspondence discussing what questions will be posed to his client. I am aware of no precedent for a court providing a witness's lawyer with an advance copy of the questions the witness will be asked during a criminal proceeding. Fortunately, there was no prejudice to Mr. Murdaugh because the Court granted Mr. Murdaugh's request to sequester the witnesses and Mr. Bland agreed to abide by the Court's decision.

However, if the examination of Juror 826 is held in public tomorrow, the attendant media coverage means the other witnesses will not be sequestered and will be given advance notice of the questions they will be asked and an opportunity to discuss their answers with others. Mr. Murdaugh therefore objects to holding tomorrow's hearing in public, and requests the courtroom be sealed, with the transcript and perhaps an audio recording released on Monday once the juror witnesses are assembled in the courthouse. The public interest in observing the examination of a single witness one business day in advance of the actual hearing is minimal and is outweighed by Mr. Murdaugh's interest in witness sequestration. For example, the juror witnesses are in communication with each other through a "chat group," for which Mr. Murdaugh can provide documentary evidence of such if the Court desires. Mr. Murdaugh should not lose the ability to seek sequestration of witnesses simply because he, the State, and the Court wished to accommodate an innocent juror's prepaid travel plans.

Mr. Murdaugh objects to the Court examining Ms. Hill at all. Rule 614(b) of the South Carolina Rules of Evidence provides, "*When required by the interests of justice only*, the court may interrogate witnesses" (emphasis added). This restriction is almost unique to South Carolina jurisprudence. It does not appear in the federal Rule 614 and Florida is the only other state with this restriction in its corresponding rule. Ms. Hill is an elected public official accused of wrongdoing, which she has denied by a sworn statement filed with this Court. She is the State's principal witness against Mr. Murdaugh. The prosecution and SLED agents just held a four-hour preparation session with her to coach her testimony even though they are supposedly investigating multiple criminal allegations against her. There is no reason the "interests of justice" would require her to be shielded from being asked questions in the same manner as almost every other witness in every other case in the history of this State. The Court has not stated any reasons for conducting the examination of Ms. Hill itself, and if the Court is determined to do so Mr. Murdaugh respectfully requests the Court state its reasons on the record prior to her examination.

Mr. Murdaugh has a right to present *any* evidence relevant to his claims which is not prohibited by "the Constitution of the United States, the Constitution of the State of South Carolina, statutes, [the South Carolina Rules of Evidence], or by other rules promulgated by the Supreme Court of South Carolina." Rule 402, SCRE. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Witness credibility is always relevant. Rule 611(b), SCRE ("A witness may be cross-examined on any matter relevant to any issue in the case, including credibility."); *see Holmes v. South Carolina*, 547 U.S. 319, 331 (2006) ("The point is that, by evaluating the strength of only one party's evidence, no logical conclusion can be reached regarding the strength of contrary

evidence offered by the other side to rebut or cast doubt.”) (unanimous opinion overruling the South Carolina Supreme Court following the second trial of a capital case). Generally, “any matter is [a] proper subject of cross-examination which is responsive to testimony given on direct examination, or which is material or relevant thereto, and which tends to elucidate, modify, explain, contradict or rebut testimony given in chief by the witness.” *State v. Taylor*, 333 S.C. 159, 174, 508 S.E.2d 870, 878 (1998). For that reason, “Considerable latitude is allowed in cross-examination to test a witness’s credibility.” *State v. Johnson*, 338 S.C. 114, 124, 525 S.E.2d 519, 524 (2000).

Whether Ms. Hill lied to the Court during trial about a member of the jury is probative of whether she is now lying to the same Court about her contacts with jurors during trial. For that reason, inquiry (by counsel) should be made into the “Facebook” matter. Plagiarizing the book that she purportedly wrote about the trial is probative of her truthfulness about her conduct during the trial. Inquiry should therefore be made into that matter. Whether Ms. Hill stated during trial that she had a financial interest in a guilty verdict is probative of the truth of her denial of allegations that she acted to secure a guilty verdict. Inquiry should therefore be made into that matter. Abusing the power of her office to steal money is probative of whether she at about the same time abused the power of her office for financial gain in other ways. “‘Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness’ testimony.’” *State v. Pipkin*, 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Ct. App. 2004) (Beatty, J.) (quoting *United States v. Abel*, 469 U.S. 45, 52 (1984)). An inquiry should therefore be made into the allegations that Ms. Hill sold access to the courthouse and otherwise misappropriated funds, to the point that during the trial she was not even allowed to have a county credit card.

The evidentiary rules prevent witness impeachment from turning into a trial-within-a-trial by prohibiting the introduction of extrinsic evidence regarding specific instances of conduct, instead generally limiting it to prior inconsistent statements and evidence of bias. See Rules 609(b), 609(c), 613(b), SCRE. Those rules are sufficient to contain the Defendant’s examination of Ms. Hill. There is no need for the Court go further and rob Mr. Murdaugh of his right to cross examine the State’s principal witness against him. Indeed, for most lines of questioning, the impeaching inquiry of Ms. Hill would be very quick. For example, she has already admitted publicly to plagiarism so that line of inquiry would be over in a minute. At a minimum, if she denies speaking with jurors about the merits of the case, Mr. Murdaugh should at least be allowed to call any percipient eyewitnesses who would contradict her. The testimony of those witnesses likely would take less than ten minutes. Whether those witnesses later deliberated with the jury is irrelevant. Ms. Hill, after all, did not deliberate with the jury either. She too is relevant only as an eyewitness to her actions.

When ruling that Mr. Murdaugh will be prohibited from calling percipient eyewitnesses to Ms. Hill’s alleged jury-tampering statements, whether to corroborate jurors who testify Ms. Hill made such statements or to rebut Ms. Hill’s sworn denial of making such statements, the Court stated, “The corroboration is something I don’t think I need at this time. I think I’m perfectly capable of evaluating what the jurors tell me and I’ll do that. I think I’m also perfectly capable of evaluating the credibility of Ms. Hill and the jurors, for that matter.” Hr’g Tr. 51:16–21. Mr. Murdaugh objects to those statements. He has a right to challenge the credibility of the State’s

principal witness against him through cross-examination, which is not contingent on how the Court perceives its own needs or capabilities. *See State v. Hester*, 137 S.C. 145, 134 S.E. 885, 899 (1926) (observing the “right to cross-examine is one which must remain inviolate,” “[t]he power of cross-examination . . . certainly is one of the most efficacious, tests which the law has devised for the discovery of truth,” and it is “[o]ne of the most inestimable rights by which a man may maintain his defense” (internal quotation marks omitted)). Respectfully, it is inappropriate for the Court to direct the parties’ factual presentations based on its own opinions, formed before receiving any evidence, about what it needs to assess witness credibility. The parties decide and present, within the limits set by the South Carolina Rules of Evidence, what they believe the Court needs to make findings of fact. *Cf. Wolff v. McDonnell*, 418 U.S. 539, 566 (1974) (“Ordinarily, the right to present evidence is basic to a fair hearing . . .”); *see also Ponte v. Real*, 471 U.S. 491, 495 (1985) (same); *Baxter v. Palmigiano*, 425 U.S. 308, 321 (1976) (same). It is Mr. Murdaugh’s burden to prove his allegations, not the Court’s. It is the State’s burden to rebut Mr. Murdaugh’s proof, not the Court’s. This is an American adversarial proceeding in a trial court, not a European inquisitorial proceeding conducted by an investigating magistrate.

With warm personal regards, I am

Sincerely,

A handwritten signature in blue ink, appearing to read 'Richard A. Harpootlian', with a long, sweeping horizontal line extending to the right.

Richard A. Harpootlian

Exhibit A

DEFENDANT MURDAUGH'S PROPOSED JUROR QUESTIONS

Q. Did you hear Ms. Hill make any comments about the testimony, evidence, or arguments presented by the State or defense, or the anticipated length of your deliberations during Mr. Murdaugh's trial?

If the answer is no, then no further questions.

If the answer is yes, the ask the following:

Q. What comments did you hear Ms. Hill make?

Q. Who else was present when Ms. Hill made those comments?

Q. Did Ms. Hill's comments influence you in any way and if so, how?

Q. Did Ms. Hill's comments prejudice you against Defendant Alex Murdaugh in any way, however slight?

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT K

(Juror Z Affidavit)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

AFFIDAVIT OF
JUROR

PERSONALLY appeared before me, [REDACTED] who being first duly sworn, deposes,
and states as follows:

1. I would like to clarify my testimony today.
2. As I testified, I felt influenced to find Mr. Murdaugh guilty by reason of Ms. Hill's remarks,
before I entered the jury room.
3. Once deliberations began as I stated in paragraph 10 of my earlier affidavit, I felt further,
additional pressure to reach the guilty verdict.

FURTHER AFFIANT SAYETH NOT.

[REDACTED]
[REDACTED]
January 29, 2024.

SWORN TO before me this 29th day
of January, 2023.

Elizabeth Guts
Notary Public for South Carolina
My Commission Expires: 12/7/25

RECEIVED

Jan 29 2024

S.C. SUPREME COURT

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT L

(Order Denying Motion for New Trial)

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)

State of South Carolina

) Case No.: 2022-GS-15-00592
) 2022-GS-15-00593
) 2022-GS-15-00594
) 2022-GS-15-00595

v.

Richard Alexander Murdaugh,

Defendant.

)
) **ORDER DENYING DEFENDANT'S**
) **MOTION FOR A NEW TRIAL**
)

RECEIVED

Apr 04 2024

S.C. SUPREME COURT

This matter comes before the Court on an Order to Remand by the South Carolina Court of Appeals filed October 17, 2023, and a Motion for a New Trial filed in this Court by Richard Alexander Murdaugh ("Murdaugh" or "Defendant Murdaugh") on October 27, 2023.

Upon Defendant Murdaugh's allegation that the jury was subjected to improper external influences by the Colleton County Clerk of Court, Rebecca Hill ("Clerk Hill"), this Court examined each of the twelve jurors who comprised the deliberative jury. Clerk Hill, Barnwell County Clerk of Court Rhonda McElveen ("Clerk McElveen"), and an alternate juror also testified. The Court had before it a copy of the original trial transcript, the pleadings, exhibits filed by the parties which included affidavits of some jurors obtained by representatives of Defendant Murdaugh, affidavits of a paralegal for defense attorney Richard A. Harpootlian, notes of interviews of jurors by South Carolina Law Enforcement Division agents, and other emails and documents thereto, and the pre-hearing briefs requested by the Court. The Court finds as follows:

I. PROCEDURAL HISTORY

Defendant Murdaugh is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. Murdaugh was



indicted at the July 2022 term of the Colleton County Grand Jury for two counts of murder (2022-GS-15-00592; -00593), and two counts of possession of a weapon during the commission of a violent crime (2022-GS-15-00594; -00595). Richard A. Harpootlian, James Mixon Griffin, Phillip D. Barber, and Margaret N. Fox, Esqs. represented Murdaugh at trial. Senior Assistant Deputy Attorney General S. Creighton Waters was the lead prosecutor at the trial, which also included Attorney General Alan Wilson, Deputy Attorney General Donald J. Zelenka, Assistant Deputy Attorney General David A. Fernandez, and Assistant Attorneys General Johnny Ellis James Jr., John B. Conrad, Savannah M. Goude, and John P. Meadors.

On Monday, January 23, 2023, Murdaugh proceeded to trial before the Honorable Clifton Newman and a jury. On March 2, 2023, the jury found Murdaugh guilty on each count as indicted on March 2, 2023. Judge Newman sentenced Murdaugh to imprisonment for consecutive terms of his natural life.

Murdaugh filed a notice of appeal. While the appeal was pending before the Court of Appeals of South Carolina, but before completion and delivery of the trial transcript, Murdaugh filed a Motion to Suspend Appeal and for Leave to File Motion for New Trial, on September 5, 2023. The State filed its return on September 15, 2023. Murdaugh filed his reply to the State's return on September 21, 2023. The Court of Appeals granted Murdaugh's motion to remand by Order filed October 17, 2023. It held the appeal in abeyance and remanded the matter to the circuit court for consideration of the motion.

Murdaugh filed his Motion for a New Trial with the Colleton County Clerk of Court on October 27, 2023. The State filed its return on or about November 7, 2023. By Order dated December 18, 2023, Chief Justice of the Supreme Court of South Carolina, Donald



W. Beatty, upon request of Judge Newman to be recused from post-trial matters in this case, appointed this Court as trial judge to preside over Defendant Murdaugh's motion. This Court convened a conference call with attorneys for the parties on December 21, 2023, and thereafter issued a scheduling order for this matter on January 3, 2024.

The parties submitted initial pre-hearing briefings on January 3, 2024, and pursuant to this Court's request, both submitted supplemental briefing on January 10, 2024.¹ Murdaugh further revised his briefing by filing on January 12, 2024. Defendant Murdaugh subsequently filed a reply to the State's pre-hearing brief on January 16, 2024.

The parties appeared before this Court on January 16, 2024, at the Richland County Judicial Center in Columbia, South Carolina, for an on-the-record status conference, at which legal arguments were made regarding the form, structure, and legal burdens to be met in the proceedings. This Court provided the parties with its proposed questions for the deliberative jurors by e-mail on January 24, 2024, and invited objections. The State provided its response by e-mail on January 24, 2024, and Defendant Murdaugh provided his response by letter e-mailed on January 25, 2024.

The Court thereafter convened evidentiary hearings into the matter on Friday, January 26, 2024,² and Monday, January 29, 2024, at the Richland County Judicial Center. Defendant Murdaugh was present at the hearing and represented by Richard A. Harpootlian, James Mixon Griffin, Phillip D. Barber and Margaret N. Fox, Esqs. Senior Assistant Deputy Attorney General S. Creighton Waters represented the State, along with

¹ Because this Court requested particulars as to expected witnesses and exhibits, and permitted the parties to send revised briefs directly to the Court rather than through public filing. The State sent its revised pre-hearing brief to this Court via e-mail on January 10, 2024, and thereafter publicly filed a redacted copy of that brief on January 29, 2024.

² With both parties' consent, this Court permitted Juror X to testify separately from the other members of the deliberative jury on Friday, January 26, 2024, because of an unavoidable scheduling conflict.



Attorney General Alan Wilson, DAG Donald J. Zelenka, AAG Johnny Ellis James Jr., and AAG John P. Meadors.

II. PRESENT APPLICATION

In his motion for a new trial, Murdaugh alleges he is entitled to a new trial because the Colleton County Clerk of Court, Rebecca Hill, made inappropriate remarks to or in the presence of the jury during the course of the trial. For the following reasons, this Court denies the motion.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. This Court makes the following rulings and findings based upon the applicable laws and all of the probative evidence presented.

A. Legal Standard for Motion for New Trial for External Influence on Jury

The first question for this Court to resolve is the appropriate standard for review of this issue. Murdaugh argues that because he alleges improper contacts by a court official, prejudice must be presumed under Remmer v. United States, 347 U.S. 227 (1954), and that the burden of proof thus shifts to the State to prove lack of any prejudice. The State agrees that criminal defendants have a right to a fair and impartial jury, but argues that the overwhelming weight of South Carolina caselaw is clear that in either cases of alleged internal *or* external influence on a jury, the burden is on the defendant to show not only



that the improper influence occurred but also resulting prejudice. After reviewing and analyzing extensive caselaw on the subject, this Court agrees with the State.

First, this Court must recognize the longstanding rule that preserves the sanctity of the jury room and generally precludes any evidentiary inquiry into the jury's deliberations or communications during such deliberations. Rule 606(b), SCRE, 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.

Our state supreme court has repeatedly recognized this principle, only allowing inquiry into allegations of internal misconduct that affect fundamental fairness, such as racism in the jury room or premature deliberations. See State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999) (premature deliberations); State v. Hunter, 320 S.C. 85, 89, 463 S.E.2d 314, 316 (1995) (racial prejudice). See also State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005) (juror consideration of defendant's exercising right not to testify); State v. Franklin, 341 S.C. 555, 324 S.E.2d 716 (Ct. App. 2000) (internal pressure from jurors did not raise issues of fundamental fairness).

Regardless, even in those cases where inquiry into internal jury misconduct was allowed, our state supreme court has still required the defendant to show both misconduct and prejudice. See Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999) (while premature



deliberations could affect fundamental fairness, the burden is still on the defendant to show prejudice—that it affected the jury’s impartiality and “affect[ed] the jury’s verdict”, and citing cases such as United States v. Piccarreto, 718 F.Supp. 1088 (W.D.N.Y.1989) for the proposition that “given length and nature of trial, it is not surprising a juror may make some comments as trial progresses; new trial is not warranted absent evidence showing such discussions shaped final deliberations or improperly influenced jurors or prejudiced defendants”, and United States v. Klee, 494 F.2d 394 (9th Cir. 1974), for the proposition that “not every instance of misconduct warrants a new trial, [and the] test is whether misconduct has prejudiced the defendant to the extent he did not receive a fair trial.); State v. Hunter, 320 S.C. 85, 89, 463 S.E.2d 314, 316 (1995) (inquiry into allegations of internal misconduct was proper where a juror claimed racial prejudice influenced the verdict, but affirming by finding defendant “ha[d] not shown juror conduct denied him a fair trial” in that the verdict was affected by racism or that the juror was physically threatened or coerced); see also 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 exercise of right not to testify); see also 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).

Moreover, where the allegations are of external influence on the jury such as the ones made in this case, the South Carolina Supreme Court has been also clear that the burden is on Defendant to show not only external influence but also resulting prejudice—



defined as whether the verdict “was solely the result of honest deliberation” or the product of “outside influence”. Blake by Adams v. Spartanburg Gen. Hosp., 307 S.C. 14, 18, 413 S.E.2d 816, 818 (1992) (affirming despite bailiff’s comment to jurors on time and expense of mistrial; while the comments improper, they “are not per se grounds for setting aside a jury verdict”, and “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”). See also State v. Green, 432 S.C. 97, 100, 851 S.E.2d 440, 441 (2020) (finding no prejudice from bailiff’s improper comments to jury on Allen procedure); State v. Pittman, 373 S.C. 527, 647 S.E.2d 144, 158-59 (2007) (defendant “failed to make the required showing of prejudice” from juror’s alleged conversation with bartender and wife; trial court conducted evidentiary inquiry and made findings supported by record, and thus did not abuse its discretion in denying motion for new trial); State v. Bryant, 354 S.C. 390, 581 S.E.2d 157 (2003) (noting that in case where police background inquiry into jurors influenced verdict, “the defendant has the opportunity to prove actual juror bias”); State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) (presence of alternate juror in jury room, who even took a preliminary vote, noting that “[w]e have consistently required defendants to demonstrate prejudice due to improper jury influences”, and finding no prejudice where juror was removed and trial court gave curative instruction); State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998) (in external influence case where a pamphlet on death penalty was brought into jury room, affirming denial of new trial in capital case, noting that trial court had examined the jurors and made credibility findings and “appellant failed to show

prejudice”); State v. Rowell, 75 S.C. 494, 56 S.E. 23, 29 (1906) (in case where bailiff made comments that defendant should be punished, finding no effect on the verdict).

Indeed, Aldret flatly noted the universal requirement of prejudice, stating: “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”, 333 S.C. at 313-14, 509 S.E.2d at 814. Grovenstein reversed our state Court of Appeals, holding that it erred because the “burden was not on the state” to rebut any presumption of prejudice, 335 S.C. at 353, 517 S.E.2d at 219. Just as in Grovenstein, the Supreme Court of South Carolina in Green reversed the Court of Appeals’ application of the Remmer presumption of prejudice, in a case alleging improper contact from a bailiff. 432 S.C at 99-100, 851 S.E.2d at 441.

Having determined that Defendant Murdaugh must show both external influence and resulting prejudice, the next point is the manner of inquiry. The South Carolina cases are clear that any such inquiry to jurors is appropriately in the discretion of this Court, and it is appropriate for any inquiry of jurors to be judicially conducted. Additionally, it for this Court to make any credibility determinations in assessing influence and resulting prejudice. See Green, 432 S.C. 97, 851 S.E.2d 440 (trial court conducted inquiry); Bryant, 354 S.C. 390, 581 S.E.2d 157 (trial court conducted limited *voir dire* of the jurors); Kelly, 331 S.C. 132, 502 S.E.2d 99 (trial court examined jurors and made credibility determinations); 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).

Indeed:

The trial court may exercise broad discretion in assessing the prejudicial effect of an allegation of juror misconduct due to an external influence. *Id.* The trial court should consider three factors when making this determination: (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.* The trial court's finding will not be disturbed absent an abuse of discretion.

Pittman, 373 S.C. at 556, 647 S.E.2d at 159. In the end:

Unless [extraneous or improper influences affect] 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. . . . 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.

Kelly, 331 S.C. at 141–42, 502 S.E.2d at 104.

Here, this Court in its discretion decided to ask each juror the following series of four questions, as well as follow up questions as deemed appropriate by this Court or as this Court deemed appropriate after consultation with the parties. The four questions were generally based on those used by the trial court who was upheld in Green, and are as follows:

1. You rendered a verdict on March the 2, 2023. That verdict was made in open court by the foreperson of the jury, and then the Court said this: Madame Forelady and members of the jury, if that is your verdict of each and every juror, let it be known by raising your hand. The transcript then indicates that the jurors complied. The jury was individually polled, and each was asked: Was that your verdict? Each juror answered yes. Each juror was then asked: Is that still your verdict? And each juror answered yes. Was that an accurate statement about your verdict at that time?



2. Was your verdict based entirely on testimony, evidence, and law presented to you in this case?
3. Did you hear Ms. Becky Hill make any comment about this case before your verdict?
4. Was your verdict influenced in any way by any communications by the clerk of court Becky Hill, in this case?

B. Assessment of Evidence before the Court at the Evidentiary Hearing

The Defendant Murdaugh asserts that Clerk Hill, motivated by her desire to sell her self-published book (published August 2023) made prejudicial comments to the jury which deprived Murdaugh of his right to a fair and impartial trial by jury. This Court had the opportunity to observe the witnesses who testified at the hearing, and to closely evaluate their credibility. For the reasons expressed herein, this Court concludes that the motion for a new trial should be denied.

1. Summary of the Testimony

A summary of the testimony before this Court is as follows:

Juror X

Juror X was the only witness who testified on January 26, 2024, due to a scheduling conflict. In response to this Court's inquiry, Juror X responded that it was an accurate statement that her verdict was guilty at the time she was polled, that her verdict was based entirely upon testimony, evidence, and law presented in the case, that she did not hear Clerk Hill make any comments about the merits of the case before their verdict, and that her verdict was not in any way influenced by communication by Clerk Hill. {P. 20}.



After the court's initial questioning of Juror X, Defendant Murdaugh's attorney published a statement received the morning of the hearing from the State which states:

Please be advised that the attorney for [Juror X] has told us that his client says that prior to the defendant's testimony, his client did hear Clerk Hill say words to the effect of, "looks like the defendant is going to testify, this is an important day" or "this is an epic day", and that there was some statement that it was rare for a defendant to testify.

After further questioning by the Court, Juror X testified that before the defendant testified in his own defense, she heard Clerk Hill say something to the effect of "this is an important day," or "this is an epic day," and some comment to the effect that it was rare for a defendant to testify. {P. 23}. She further stated that those comments had no impact on her verdict. {P. 24}.

Juror Z

In response to this Court's inquiry, Juror Z testified that it was an accurate statement that her verdict was guilty at the time she was polled, and that her verdict was based entirely upon testimony, evidence, and law presented in the case. However, Juror Z stated that she did hear Clerk Hill make comments about the case before the verdict. Juror Z stated that Clerk Hill said "to watch his actions" and "to watch him closely". {P. 45}. Juror Z stated that her verdict was influenced by communication by Clerk Hill, and that she felt Clerk Hill thought the defendant was guilty. {P. 46}. This Court provided the witness with her prior affidavit, which was attached to the defense motion, and in which Juror Z stated that she "had questions about Mr. Murdaugh's guilt but voted guilty because [she] felt pressured by the other jurors." The court asked Juror Z whether her



affidavit was a more accurate statement of how Juror Z felt. She responded "Yes" and she stood by her affidavit. **{PP. 55-56}**.

Following the testimony of Juror Z, this Court was made aware that some of the trial jurors in the jury room waiting to testify in the January 29 hearing had their cell phones out and were observing a livestream of the court proceedings. Accordingly, this Court in its discretion also inquired of jurors whether they had observed the prior proceedings and whether it had any effect on their testimony.

Juror C

Juror C stated that he was not one of the people with their phone out, and that he had not seen any prior January 29 proceedings on a cell phone. In response to this Court's inquiry, Juror C responded that it was an accurate statement that his verdict was guilty at the time he was polled, that his verdict was based entirely upon testimony, evidence, and law presented in the case, that he did not hear Clerk Hill make any comments about the merits of the case before his verdict, and that his verdict was not in any way influenced by communication by Clerk Hill. **{P. 65}**.

Juror F

Juror F stated that she was not one of the people with their phone out, and that nothing that she had seen or heard would impact her testimony. In response to this Court's inquiry, Juror F responded that it was an accurate statement that her verdict was guilty at the time she polled, that her verdict was based entirely upon testimony, evidence, and law presented in the case, that she did not hear Clerk Hill make any comments about the merits of the case before her verdict, and that her verdict was not in any way influenced by communication by Clerk Hill. **{P. 65-67}**.

After further questioning by this Court regarding allegations by Defendant Murdaugh that Clerk Hill drove Juror F home, Juror F stated that Clerk Hill never gave her a ride home nor rode with her in a vehicle. {P. 69}.

Juror L

Juror L stated that he was not one of the people with their phone out, and that he had not seen any prior proceedings from the January 29 hearing. In response to this Court's inquiry, Juror L responded that it was an accurate statement that his verdict was guilty at the time he was polled, that his verdict was based entirely upon testimony, evidence, and law presented in the case, that he did not hear Clerk Hill make any comments about the merits of the case before his verdict, and that his verdict was not in any way influenced by communication by Clerk Hill. {PP. 71-72}.

Juror E

Juror E stated that he was not one of the people with their phone out, and that he had not seen any prior proceedings from the January 29 hearing. In response to this Court's inquiry, Juror E responded that it was an accurate statement that his verdict was guilty at the time he was polled, that his verdict was based entirely upon testimony, evidence, and law presented in the case, that he did not hear Clerk Hill make any comments about the merits of the case before his verdict, and that his verdict was not in any way influenced by communication by Clerk Hill. {PP. 73-74}.

Juror P

Juror P stated that he was not one of the people with their phone out, and that he had not seen any prior proceedings from the January 29 hearing. In response to this Court's inquiry, Juror P responded that it was an accurate statement that his verdict was



guilty at the time he was polled, and that his verdict was based entirely upon testimony, evidence, and law presented in the case. {P. 77}. Juror P stated that the day Defendant Murdaugh testified in his own defense Clerk Hill said to watch his body language. The Juror recalled no other statements. {P. 78}. Juror P testified that his verdict was in no way influenced by any communication by Clerk Hill. {P. 78}.

Juror O

Juror O stated that he was not one of the people with their phone out, and that he had not seen any prior proceedings from the January 29 hearing. In response to this Court's inquiry, Juror O responded that it was an accurate statement that his verdict was guilty at the time he was polled, that his verdict was based entirely upon testimony, evidence, and law presented in the case, that he did not hear Clerk Hill make any comments about the merits of the case before his verdict, and that his verdict was not in any way influenced by communication by Clerk Hill. {PP. 79-81}.

Juror Y

Juror Y stated that he was not one of the people with their phone out, and that he had not seen any prior proceedings from the January 29 hearing. In response to this Court's inquiry, Juror Y responded that it was an accurate statement that his verdict was guilty at the time he was polled, that his verdict was based entirely upon testimony, evidence, and law presented in the case, that he did not hear Clerk Hill make any comments about the merits of the case before his verdict, and that his verdict was not in any way influenced by communication by Clerk Hill. {PP. 82-84}.

Juror W



Juror W stated that she was not one of the people with their phone out, and that nothing she had seen from others' phones would affect her testimony. In response to this Court's inquiry, Juror W responded that it was an accurate statement that her verdict was guilty at the time she was polled, that her verdict was based entirely upon testimony, evidence, and law presented in the case, that she did not hear Clerk Hill make any comments about the merits of the case before her verdict, and that her verdict was not in any way influenced by communication by Clerk Hill. **{PP. 86-87}**.

Juror Q

Juror Q stated that he did have his cell phone out during the testimony of Juror Z, but that what he saw had no impact on his testimony. **{P. 90}**.

In response to this Court's inquiry, Juror Q responded that it was an accurate statement that his verdict was guilty at the time he was polled, that his verdict was based entirely upon testimony, evidence, and law presented in the case, that he did not hear Clerk Hill make any comments about the merits of the case before his verdict, and that his verdict was not in any way influenced by communication by Clerk Hill. **{P. 89}**.

Juror K

Juror K stated that she did have her cell phone out and was looking at Facebook about Juror Z's testimony, but that she did not watch Juror Z's testimony and closed it. She stated that what she saw had no impact on her testimony. **{P. 92}**.

In response to this Court's inquiry, Juror K responded that it was an accurate statement that her verdict was guilty at the time she was polled, that her verdict was based entirely upon testimony, evidence, and law presented in the case, that she did not hear

Clerk Hill make any comments about the merits of the case before her verdict, and that her verdict was not in any way influenced by communication by Clerk Hill. **{P. 93}**.

Clerk Hill

During testimony at the hearing before this Court, Clerk Hill denied making the statements alleged by Defendant Murdaugh.³ **{PP. 108-109}**. When asked if she made any comment to the jurors about the fact that the Defendant Murduagh was going to testify in his own defense, Clerk Hill stated that she had a conversation with Mr. Bill, the jury bailiff, when jurors were nearby. Clerk Hill testified that during that conversation she stated that the defendant was going to testify. She further testified that she had given a pep talk to the jurors, as she often did, reminding them to pay attention and that today was a big day. **{P. 110}**.

Clerk Hill testified that after the jury had entered their verdict and been individually polled, she informed the jury that members of the media were interested in interviewing them about the trial. She stated that she did not pressure the jurors to participate in interviews and told them it was their decision. **{P. 113}**.

When questioned by Defendant Murdaugh's attorneys, Clerk Hill stated that she began working with her coauthor on the book several weeks after the trial. **{P. 117}**. She stated that she spoke to several people about the possibility of writing a book before the trial. Clerk Hill generally could not recall the content of her conversations with Barnwell Clerk of Court Rhonda McElveen. Clerk Hill denied telling Clerk McElveen that she wanted to write a book in order to make a lot of money. **{P. 119}**.

³ Clerk Hill was asked by the State if she told jurors "not to be fooled by evidence presented by Defendant Murdaugh's attorneys." To "Look at his movements." And that "[deliberations] shouldn't take long." She denied each allegation.



When questioned by Defendant Murdaugh's attorneys about the conclusions in her book, Clerk Hill stated that she took poetic and literary license when writing her book in order to make a compelling narrative. {P. 125}. She admitted under oath to plagiarizing portions of the book from a journalist. {P. 126}. Clerk Hill testified that the book made roughly \$100,000 in the six months it was on the market. {P. 133}.

This Court then made an inquiry into the dismissal of a juror before the conclusion of the trial. Clerk Hill testified that she recalled seeing in the transcript that Judge Newman expressed unhappiness that she had questioned the dismissed juror before bringing the juror to the judge. {P. 146}. Clerk Hill denied asking the dismissed juror about her ex-spouse or the Facebook post, but stated the juror mentioned the ex-spouse and restraining orders on her own while walking to the judge's chambers. {PP. 147-19}. Clerk Hill stated that she believed the Juror spoke with a member of the staff but not with her directly. {P. 151}. Clerk Hill stated that she did not deny the allegations as Judge Newman made them because she was not in the room. {P. 153}.

Clerk Hill denied giving anyone access to the sealed exhibits, and stated that during trial someone in the gallery took a picture of a sealed exhibit. {PP. 153-156}.

When questioned by the Court, Clerk Hill denied that she wanted a guilty verdict in order to increase book sales. However, under further questioning from the Court, Clerk Hill admitted that she wrote that she wanted a guilty verdict in the book. She further testified that her book said she and the jurors looked at one another and there was a silent understanding that he was guilty. Clerk Hill again blamed this on literary license. {P. 157}. She stated that she personally felt the defendant was guilty before the verdict was rendered. {P. 158}. On re-direct Clerk Hill stated that she was only in the room with



the excluded juror when Clerk Hill herself was being asked questions, and that some body-cam videos had not been sealed and there was a post-trial hearing in which Judge Newman fixed the problem. **{PP. 159-160}**.

On re-cross Clerk Hill admitted exhibits that should have been sealed were released in error to Netflix, but they got them back before Netflix even looked at them. She denied that sealed exhibits were sent to a Japanese film crew or other outlets. **{PP. 160-161}**. Defendant put in an e-mail where Clerk Hill informed the Japanese film crew of the mistaken release and stated Judge Newman ordered that they not be used. **{PP. 162-163; Def. Ex. 2}**. This email was at variance with her sworn testimony before this Court.

Clerk McElveen

Clerk McElveen testified that she was present at the hearing nearly every day of the six-week trial. She was requested by Clerk Hill to assist with the administration of the Murdaugh trial. **{P. 180}**. Clerk McElveen testified that Clerk Hill told her she wanted to write a book about the Murdaugh trial and that she wanted a guilty verdict. **{P. 181}**. Clerk McElveen stated that Clerk Hill said this multiple times over the course of the trial. **{P. 182}**.

Clerk McElveen testified that she had heard from another party that that Clerk Hill had driven a juror home. She stated that she confronted Clerk Hill about the incident. She further testified that she did not inform Judge Newman. **{P. 183}**. Under additional questioning from the State, Clerk McElveen testified she never observed or was told Clerk Hill was having improper conversations with jurors, or that she observed anything Clerk



Hill or anyone else untoward or improper, or she would have gone to Judge Newman as would have been her obligation. {P. 194-96}.

Clerk McElveen further testified that the comments she heard Clerk Hill make regarding the defendants' guilt and conduct all took place away from the jurors. {P. 193}. Clerk McElveen stated that she was not aware of any confidential information or sealed images being given to members of the press. {P. 195}.

Juror 714

Juror 714 testified under questioning by Defendant Murdaugh's attorneys based upon an affidavit signed the morning of the hearing that Clerk Hill told the jury "Don't let them confuse you or convince you or throw you off." {P. 203}. Juror 714 further testified that on the visit to Moselle, Clerk Hill and a juror were talking as they walked to the property, but she could not hear what was said. {P. 205}.

2. Findings of the Court

As to the first prong, whether Clerk Hill had any improper or undesirable communication with any opinion to a juror, the Court finds Clerk Hill not to be a completely credible witness. This Court finds that Clerk Hill wanted to write a book as early as November 2022. This Court finds Clerk Hill stated to Clerk McElveen that she "might want to write a book because [Clerk Hill] needed a lake house and [Clerk McElveen] needed to retire, ..." {P. 182}. Clerk Hill also told Clerk McElveen that "a guilty verdict would sell more books, ..." *Id.* This Court further finds that Clerk Hill made comments such as "this is an important day" or "this is an epic day" on the day Defendant testified (as testified to by Juror Z), or to watch Defendant's body language (as testified to by Juror P). Clearly these comments were improper and should not have been made to any juror. Clerk Hill's



denial under oath that she made these comments is not credible. Clerk Hill was attracted by the siren call of celebrity. She allowed her desire for the public attention of the moment to overcome her duty to her oath of office and her oath as a witness.

This Court finds that there was no effect on the verdict of any juror from any such comments from Clerk Hill, and this Court specifically finds, after conducting this evidentiary hearing, that Defendant Murdaugh's verdict was the product of a fair and impartial jury. This Court had the opportunity to observe and question the jurors, and specifically finds jurors X, C, F, L, E, P, O, Y, W, Q, and K to be credible. Moreover, this Court specifically finds jurors X, C, F, L, E, P, O, Y, W, Q, and K credible that their verdict was accurately announced during polling, that it was the product entirely of the testimony, evidence, and law in the case, and that their verdict was in no way influenced by any communications from the Clerk.

The Court finds Juror Z to have been at first ambivalent in her testimony. However, this Court finds credible the portion of her statements made both at trial and during the hearing before this Court that her verdict was accurately announced as guilty during polling, and that it was the product entirely of the testimony, evidence, and law in the case. This Court also finds credible Juror Z's statement in her affidavit and at the hearing that any effect she felt was pressure from other jurors, which is a normal part of the give and take of the deliberative process. This Court also finds credible the juror's statement under questioning by this Court that her statement in her affidavit that she voted guilty because of pressure by other jurors was the "more accurate statement" of how she felt. **{PP. 95-96}**. Internal deliberative pressure is not a basis for challenging a verdict.⁴ This

⁴ Rule 606(b), cmt., SCRE ("Subsection (b) is consistent with the general rule that a juror may not present testimony as to the deliberations in the jury room; as to any mistake, irregularity, or misconduct on the part



Court finds that both at trial and at the hearing before this Court, Juror Z stood on her oath as to the accuracy and impartiality of her guilty verdict. Finally, for these reasons this Court does not find credible Juror Z's ambivalent and self-contradicted statements to the contrary that her verdict was in any way affected by any comments from Clerk Hill.

Accordingly, this Court specifically finds after its review of the evidence and credibility findings, that each member of this jury took its involuntary assignment seriously, that they obeyed the instructions of the trial court, that they obeyed their oath, and that they stood to their duty and rendered a fair and impartial verdict free of fear, favor, or influence.

of jurors; or which would impeach the verdict or contradict the record."); see also *State v. Pittman*, 373 S.C. 527, 553–55, 647 S.E.2d 144, 157–58 (2007) (citing Rule 606(b), SCRE, and affirming trial court's rejection of post-trial testimony from two jurors that they thought the defendant was not guilty, and holding that: "[t]he jurors' post-verdict testimonies are representative of many jury deliberations where individuals are persuaded, for whatever reason, to change their vote. As long as the reason prompting the change was not coercive or oppressive, the court should not disturb the finality of the verdict."); *State v. Franklin*, 341 S.C. 555, 534 S.E.2d 716 (Ct.App.2000) (finding juror's affidavit was insufficient to show that she was coerced to vote guilty as a result of internal misconduct where she was allegedly called derogatory names and screamed at by fellow jurors). See also *United States v. Wettstain*, 618 F.3d 577 (6th Cir. 2010) (quoting *McDonald v. Pless*, 238 U.S. 264, 267 (1915)) (in affirming rejection of juror's letter regretting voting for a guilty verdict, explaining the rule is that a juror is incompetent to impeach the verdict, and that "[i]f this were not so, the Supreme Court explained, 'jurors would be harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct sufficient to set aside a verdict.'"); *United States v. Gerardi*, 586 F.2d 896, 898 (1st Cir.1978) (juror's second thoughts about conviction do not compel new trial); *United States v. Weiner*, 578 F.2d 757, 764 (9th Cir. 1978) (refusing to grant new trial after juror expressed second thoughts about verdict); *Reames v. State*, 497 N.E.2d 559, 565-66 (Ind. 1986) (quoting *Stinson v. State*, 313 N.E.2d 699, 704 (Ind. 1974)) (in affirming denial of motion for new trial based on juror comment of regret for verdict, explaining that if the juror's regret were considered "Jurors would be harassed by both sides of litigation and find themselves in a contest of affidavits and counter-affidavits and arguments and re-arguments as to why and how a certain verdict was reached. Such an unsettled state of affairs would be a disservice to the parties litigant and an unconscionable burden upon citizens who serve on juries."); *Diaz v. Uniroyal Tire Co.*, 618 So. 2d 505, 508 (La. Ct. App. 1993) ("Furthermore, a final adjudication is just that, and, thereafter, any second thoughts of the jurors will not be entertained."); *Com. v. Dias*, 646 N.E.2d 1065, 1068 (Mass. 1995) ("When a verdict is received and recorded, and the jurors indicated their concurrence by affirming the verdict in open court, neither a juror's change of heart nor a juror's subsequent disclosure of a subjective disagreement with her apparent vote provides a basis for vacating the verdict."); *State v. Buchmann*, 380 N.W.1d 879 (Minn. 1986) ("[a]bsent a showing of juror bias or prejudice or outside influence, claims of second thoughts are too late and cannot be used to impeach a verdict."); *State v. Wells*, 249 S.C. 249, 262, 153 S.E.2d 904, 910-11 (1967) (quoting 53 Am.Jur. 769, Trial § 1105) ("[I]t is a long-established and generally accepted doctrine, except where modified by statute, that testimony or affidavits of jurors impeaching a verdict rendered by them will not be received where the facts sought to be shown are such as inhere in the verdict.").



This Court further finds that the improper comments made by Clerk Hill as expressed by Jurors Z and P were limited in subject and not overt as to opinion, were only heard by, at most, three jurors, and were made in a case with overwhelming and compelling evidence. This Court further finds that any comments that occurred were cured by the trial court's extensive instructions. Once the jury was selected, Judge Newman promptly admonished the original eighteen jurors that "[i]t is important for you to know that you are not to discuss the case with each other or with anyone else, and not to endeavor to find out any information about this case other than what you will see herein the jury—in the courtroom." {Tr. 411, ll. 12-16}. After a break, and during Judge Newman's preliminary instructions, he again emphasized the importance of not discussing the case and accepting only the evidence presented in the courtroom:

Until I tell you that it's time to do so, you cannot discuss the case with anyone, including your fellow jurors. You cannot discuss the case with family, friends, or anyone else. The attorneys in the case, you cannot discuss it with them or any parties or anyone else that might be connected with the case. Should you discover that a fellow juror is violating that oath and that order, you are to bring that to my attention.

Now, it's also—and it's vital that you do not seek information outside of the courtroom during the case. That means that you're not to search internet websites, watch television reports, news reports, any other form of social media accounts of the case because you are sworn to decide this case based on the facts as you determine them to be, and based on the evidence presented in the case, as well as the law as I give it to you.

{Tr. 417-18}.

Consistently throughout the trial, and even at points during jury selection, the Court reminded and admonished jurors to not discuss the case.⁵

⁵ See Tr. 99, ll. 10-12; Tr. 127, ll. 13-20; Tr. 177, ll. 22-25; Tr. 452, ll. 12-18; Tr. 502, ll. 2-4; Tr. 566, ll. 9-11; Tr. 627, ll. 14-15; Tr. 710, ll. 18-19; Tr. 810, ll. 21-23; Tr. 840, ll. 6-8; Tr. 861, ll. 18-20; Tr. 908, ll. 24-25; Tr. 1001, ll. 6-8; Tr. 1125-26; Tr. 1251, ll. 10-12; Tr. 1513, ll. 3-5; Tr. 1535, ll. 13-18; Tr. 1694, ll. 24-25; Tr. 1950, ll. 20-21; Tr. 1966, ll. 11-14; Tr. 2140, ll. 14-15; Tr. 2228, ll. 23-25; Tr. 2304, ll. 13-15; Tr. 2480, ll. 15-17; Tr. 2542, ll. 17-18; Tr. 2649, ll. 12-14; Tr. 2877, ll. 22-24; Tr. 2933, ll. 16-18; Tr. 3005, ll. 18-20; Tr. 3034,



In his charge to the jury at the end of the case, Judge Newman instructed the jury they were to accept only the evidence presented, and that they were the sole judges of credibility:

You are to consider only the testimony which has been presented from this witness stand, along with other exhibits that—and evidence presented during the trial. Any other evidence or exhibits which have been made a part of the record you may consider, along with any stipulations made by counsel.

You are also the judges, the sole judges of the credibility, that is the believability, of the witnesses who have testified and of the evidence offered. [. . .]

It becomes your duty as jurors to analyze and to evaluate the evidence, and determine that evidence, which convinces you of its truth. [. . .]

(Tr. 5853-84). In addition to the *dozens* of times Judge Newman told the jury “do not discuss the case,” prior to the close of evidence, he again instructed jurors: “If your deliberations necessitate an overnight break, you may use these [electronic] devices as necessary, but you may not use them to communicate with anyone about the case until the case is over.” (Tr. 5862, ll. 18-21). Judge Newman further instructed jurors that an overnight break in deliberations was a possibility, and that if they so broke that they were not to seek information and should avoid the use of electronic devices. (Tr. 5862-64).

ll. 4-5; Tr. 3058, ll. 4-5; Tr. 3231, ll. 1-2; Tr. 3322, ll. 9-10; Tr. 3352, ll. 6-8; Tr. 3384, ll. 14-16; Tr. 3451, ll. 19-20; Tr. 3553, ll. 13-14; Tr. 3831, ll. 8-9; Tr. 3883, ll. 4-6; Tr. 3904, ll. 9-10; Tr. 3923, ll. 7-8; Tr. 3972, ll. 20-21; Tr. 4048, ll. 2-4; Tr. 4130, ll. 15-21; Tr. 4202, ll. 12-14; Tr. 4271, ll. 12-13; Tr. 4310, ll. 13-14; Tr. 4394, ll. 21-25; Tr. 4462, ll. 14-16; Tr. 4534, ll. 13-14; Tr. 4593, ll. 20-21; Tr. 4693, ll. 12-14; Tr. 4748, ll. 17-19; Tr. 4774, ll. 21-22; Tr. 4890, ll. 16-20; Tr. 4966, ll. 20-24; Tr. 5014, ll. 18-20; Tr. 5065, ll. 5-6; Tr. 5084, ll. 8-12; Tr. 5147, ll. 20-21; Tr. 5280, ll. 16-17; Tr. 5359, ll. 22-23; Tr. 5526, ll. 10-12; Tr. 5656, ll. 2-5; Tr. 5668, ll. 20-25; Tr. 5816, ll. 13-15; Tr. 5851, ll. 8-11). The Court cannot confirm that every admonition to the jury to not discuss the case is here cited from the 5,895-page transcript, however this Court find that Judge Newman consistently admonished the jury with “do not discuss the case” upon breaks in the proceedings, and the citations here provided represent an index of such verbiage.



Not every inappropriate comment by a member of court staff to a juror rises to the level of constitutional error. Green, 432 S.C. at 100, 851 S.E.2d at 441; State v. Cameron, 311 S.C. 204, 207-08, 428 S.E.2d 10, 12 (Ct. App. 1993). "Were that the rule, few trials would be constitutionally acceptable." Phillips, 455 U.S. at 217. Additionally, jurors are presumed to follow the law as instructed to them, to include instructions of what constitutes proper evidence to consider in deliberations, and such instructions are usually deemed to have cured the erroneous exposure to improper evidence or argument. Grovenstein, 335 S.C. at 353, 517 S.E.2d at 219 (1999).

Given all these factors, this Court simply does not believe and does not conclude that a few foolish comments by a publicity-influenced clerk of court were such that they could in any way undermine the fairness and impartiality of six-week trial with its extensive evidentiary presentations, arguments from counsel, and instructions from the trial court. While this Court finds that Defendant Murdaugh failed his burden to prove prejudice, this Court also find that any possible presumption of prejudice was overcome by these facts and this Court's findings.

This was an enormously difficult criminal trial. Judge Newman began this trial only two weeks after he and his wife lost their son to unexpected heart failure. In the face of this personal tragedy, Judge Newman, over six difficult weeks of trial, exemplified complete command of the law and the facts of this very complex proceeding. His patience and professional manner exemplified the ideals of fair and equal justice to which all of his fellow judges, including the undersigned, aspire. It was a high honor for me to complete this task.



IV. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Murdaugh is not entitled to a new trial.

IT IS THEREFORE ORDERED:

1. That the motion for a new trial is **DENIED**;
2. Murdaugh must provide a filed copy of this Order to the Court of Appeals of South Carolina in order to lift the prevailing stay on his appeal; and
3. Murdaugh must remain and be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 3d day of April, 2024.



JEAN HOEFER TOAL, CHIEF JUSTICE (RET.)
Presiding Judge
Fourteenth Judicial Circuit

Columbia, South Carolina

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Jul 10 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

COLLETON COUNTY
Court of General Sessions
The Honorable Jean Hoefer Toal, Chief Justice (Ret.)

Appellate Case No. 2024-000576

Richard Alexander Murdaugh.....Appellant,

v.

The State of South Carolina.....Respondent.

PROOF OF SERVICE

I certify that on July 10, 2024, I served Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR, by emailing it to its attorney of record with the South Carolina Attorney General's Office, Creighton Waters (CWaters@scag.gov).

Respectfully submitted,

s/ Richard A. Harpootlian
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July 10, 2024

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Jul 10 2024

SC Court of Appeals

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201
ctappfilings@sccourts.org

Re: State v. Richard A. Murdaugh
Appellate Case No. 2024-000576

Dear Ms. Kitchings,

Please find attached for filing Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR.

With warm personal regards, I am

Sincerely,

s/Richard A. Harpoottlian
Richard A. Harpoottlian

/hm

Enclosure

cc: Creighton Waters, Esquire