

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Aug 21 2024**

S.C. SUPREME COURT

---

COLLETON COUNTY  
Court of General Sessions  
The Honorable Clifton B. Newman, Circuit Judge

Appellate Case No. 2023-000392

---

The State .....Respondent,

v.

Richard Alexander Murdaugh.....Appellant.

---

**APPELLANT RICHARD ALEXANDER MURDAUGH’S  
REPLY IN SUPPORT OF HIS MOTION TO STAY BRIEFING, OR, IN THE  
ALTERNATIVE, FOR AN EXTENSION TO SERVE AND FILE HIS INITIAL BRIEF  
AND RETURN TO THE STATE’S MOTION TO CONSOLIDATE APPEALS**

---

Appellant Richard Alexander Murdaugh, through undersigned counsel, hereby replies to the return of the state in opposition to his motion to stay briefing, or alternatively for an extension, and responds in opposition to the State’s motion to consolidate this appeal with Appellate Case No. 2424-000576.

On March 2, 2023, Appellant was convicted of two counts of murder and two related firearms charges, and he timely noticed the instant appeal from those convictions (the “Direct Appeal”). On September 5, 2023, he moved to suspend the Direct Appeal and for leave to move for a new trial based on after-discovered evidence of jury tampering by Rebecca Hill, the Colleton County Clerk of Court. The Court of Appeals granted the motion, and he moved for a new trial

on October 27, 2023. A one-day evidentiary hearing concluded on January 29, 2024, and the trial court denied the motion for a new trial on April 11, 2024. Appellant timely appealed the denial, and that appeal has been docketed as Appellate Case No. 2024-000576 (the “Jury Tampering Appeal”). On August 13, 2024, the Court certified the Jury Tampering Appeal, pursuant to Rule 204 of the South Carolina Appellate Court Rules. Appellant then filed his initial brief in the Jury Tampering Appeal, which had already been filed in the Court of Appeals. The Court then certified the Direct Appeal. Appellant moved to stay briefing in the Direct Appeal, or, in the alternative, for an extension matching the December 10, 2024, briefing deadline the Court of Appeals previous set for the Direct Appeal.

**A. Reply in Support of Motion to Stay Briefing, or, in the Alternative, for an Extension to Serve and File Appellant’s Initial Brief**

Appellant asked to stay briefing in the Jury Tampering Appeal because it might moot the Direct Appeal, which is a much larger appeal. Appellant submits that concern is reasonable because Appellant’s counsel conducts these appeals without compensation, which the South Carolina Commission on Indigent Defense would otherwise conduct at taxpayer expense. *See* S.C. Code § 17-3-310 *et seq.* Nevertheless, given the State’s opposition and its motion for consolidation, Appellant abandons his request to stay briefing in the Direct Appeal.

Appellant instead only requests the Court modifying its Order certifying the Direct Appeal to adopt the December 10, 2024, briefing deadline set by the Court of Appeals. As the Court of Appeals found, a briefing extension in the Direct Appeal is necessary because it is an appeal from what may be the longest criminal trial in the history of South Carolina. There were six weeks of testimony producing a trial transcript of nearly 6000 pages and over 450 trial exhibits. There were also over a dozen pretrial motions and hundreds of hearing transcript pages. Yet much of the time following the filing of the notice of appeal was consumed researching and litigating a motion for

a new trial based on evidence discovered after trial that an elected state official tampered with the jury during trial because she wanted to profit from writing a book about a guilty verdict, an extraordinary circumstance that had never happened before. The trial court found the tampering did in fact did occur and the separate Jury Tampering Appeal is pending regarding the legal significance of that finding, which the Court of Appeals ordered Appellant to brief by August 9, 2024 (extended to August 12, 2024, due to Hurricane Debby). Further, Appellant's counsel practice at very small firms; nonetheless, as noted above, they conduct this appeal without compensation. They must meet their professional responsibilities in other cases.

Appellant therefore requests the Court not *sua sponte* reverse the decision of the Court of Appeals to grant an unopposed motion for a briefing extension in the Direct Appeal based on its finding of extraordinary circumstances.

#### **B. Response in Opposition to Motion for Consolidation**

Appellant respectfully assumes that a *sua sponte* reversal of the Court of Appeals' order was not the Court's intent, and that the 30-day deadline imposed by its Order certifying the Direct Appeal was standard language in a form order assuming jurisdiction over the case, just as the Court presumably did not intend, by an identical form order, to grant Appellant an unrequested 30-day extension for his initial brief in the Jury Tampering Appeal the day after he filed his brief. Appellant therefore proceeds to state his opposition to the State's motion to consolidate the appeals under the assumption that his initial brief, either for the Direct Appeal or a consolidated appeal, would be due on December 10, 2024.

The State offers no real argument in favor of consolidation. It only makes a tautological point that "[b]y consolidation, these two companion cases arising from the same judgment of

conviction and sentence will be reviewed together,” without explaining why that is desirable.<sup>1</sup> Appellant submits, for reasons explained below, that it is not desirable.

In the absence of consolidation or further extensions, the State’s brief in the Jury Tampering Appeal will be due September 12, 2024. The Court could, in its discretion, hold oral argument in early October and issue an opinion disposing of the Jury Tampering Appeal *before* Appellant’s initial brief on the Direct Appeal from the murder convictions. The Rebecca Hill issue would be resolved without delaying the Direct Appeal at all.<sup>2</sup> Appellant believes it is in the interests of justice and our judicial system to resolve the issue of jury tampering by an elected official in a televised murder trial as soon as practicable—which is why Appellant moved for certification of the appeal. Additionally, the current timeline, if unaltered by consolidation, could resolve the issue before Ms. Hill’s State Ethics Commission hearing on December 19, 2024, and presumably before any significant public proceedings in her criminal prosecution. The quickest possible resolution of these issues would be achieved by maintaining the status quo in the Jury Tampering Appeal.

---

<sup>1</sup> The State cites *State v. Rearick* with the parenthetical “Court opposition to the practice of piecemeal appeals.” Mot. Consolidate 3 (quoting 417 S.C. 391, 401, 790 S.E.2d 192, 197 (2016)). But in *Rearick* “piecemeal” was just a synonym for “interlocutory.” See 417 S.C. at 397, 790 S.E.2d at 195. *Rearick* held interlocutory appeals in criminal cases are undesirable in support of the long-standing principle that a defendant may not notice an appeal in a criminal case before sentence is imposed, even when the issue on appeal is a double jeopardy claim. *Id.* It has nothing to do with an appeal of the denial of a post-sentencing motion filed months after sentence was imposed and a direct appeal was noticed. The other case the State cites, *Good v. Hartford Acc. & Indem. Co.*, 201 S.C. 32 S.E.2d 209 (1942), is even more inapposite. *Good* concerned an appeal from evidentiary rulings in a civil case that ended in a mistrial. 201 S.C. 32, 21 S.E.2d at 210.

<sup>2</sup> The State argues consideration of the Direct Appeal would be delayed if the Jury Tampering Appeal is denied because Appellant might petition the United States Supreme Court for a writ of certiorari. That argument is too speculative to consider. A petition for certiorari would not stay anything unless it is granted, and the Supreme Court only grants petitions for certiorari in about 1% of cases. Regardless, the State’s fear that the Supreme Court might decide to review the Court’s decision on a legal question is not grounds for a motion for the Court to delay consideration of that legal question.

With the State’s requested consolidation, nothing at all would happen until December 10, 2024. The Direct Appeal brief will be at least twice as long as the Jury Tampering Appeal brief, resulting in a combined brief of over 150 pages. The State would request, and rightly be granted, an extension of at least 30 days so that its also-oversized responsive brief would not be due over the Christmas and New Year’s holidays. Briefing for a consolidated appeal would not be complete in February or March, and given the size of the appeal, an opinion likely could not issue until the end of Summer 2025—a full year from now. Appellant does not believe it is in the public interest to allow the Rebecca Hill issue to linger another full year.

Further, the status quo preserves options for the Court. After the briefing is complete on the Jury Tampering Appeal, the Court could then decide to consolidate the appeals if doing so would aid the decisional process. Or, if the resolution of the Jury Tampering Appeal does not moot the Direct Appeal, the Court could proceed to consider the Direct Appeal no later than it would have in the event of consolidation—or it could remand it back to the Court of Appeals.

The State’s motion for consolidation, if granted, would extend the Jury Tampering Appeal well into next year without assisting the resolution of the Direct Appeal at all. But it would have one other effect: The State would get *six months* to respond to Appellant’s brief regarding Ms. Hill’s jury tampering, because Appellant has already served his brief, as he was ordered to do by the Court of Appeals, but with consolidation the State’s responsive brief would not be filed until February at the earliest. That would be an extraordinary departure from, in the State’s words, “the usual 30 days as normally done i[n] criminal appeals,” Mot. Consolidate 5–6, but little in this case is “usual” or “normal,” which presumably is why the Court has seen fit to certify it.

s/Richard A. Harpootlian  
Phillip D. Barber, SC Bar No. 103421  
Richard A. Harpootlian, SC Bar No. 2725  
RICHARD A. HARPOOTLIAN, P.A.  
1410 Laurel Street (29201)  
Post Office Box 1090  
Columbia, SC 29202  
(803) 252-4848  
rah@harpootlianlaw.com  
pdb@harpootlianlaw.com

James M. Griffin, SC Bar No. 9995  
Margaret N. Fox, SC Bar No. 76228  
GRIFFIN HUMPHRIES LLC  
4408 Forest Drive (29206)  
Post Office Box 999  
Columbia, South Carolina 29202  
(803) 744-0800  
jgriffin@griffinhumphries.com  
mfox@griffinhumphries.com

*Attorneys for Appellant Richard Alexander  
Murdaugh*

August 21, 2024  
Columbia, South Carolina.